

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)) Chapter 11
))
FTX TRADING LTD., et al. ¹)) Case No. 22-11068 (JTD)
))
)) (Jointly Administered)
Debtors.))
)) Ref. Docket No. 45

**JOINDER OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO MAINTAIN A CONSOLIDATED LIST OF
CREDITORS IN LIEU OF SUBMITTING A SEPARATE MATRIX
FOR EACH DEBTOR, (II) AUTHORIZING DEBTORS TO
REDACT OR WITHHOLD CERTAIN CONFIDENTIAL INFORMATION OF
CUSTOMERS AND PERSONAL INFORMATION OF INDIVIDUALS
AND (III) GRANTING CERTAIN RELATED RELIEF**

¹ The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in the FTX Chapter 11 Cases, a complete list of the FTX Debtors and the last four digits of their federal tax identification number is not provided herein. A complete list of such information may be obtained on the website of the FTX Debtors' claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors and debtors-in-possession (collectively, “FTX” or the “Debtors”), by and through its undersigned proposed counsel, hereby submits this joinder (the “Joinder”) to the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain a Consolidated List of Creditors in Lieu of Submitting a Separate Matrix for each Debtor, (II) Authorizing the Debtors to Redact or Withhold Certain Confidential Information of Customers and Personal Information of Individuals and (III) Granting Certain Related Relief* [Docket No. 45] (the “Motion”) and in response to the *United States Trustee’s Objection to the Motion* [Docket No. 200] and the *Expedited Motion of Bloomberg L.P., Dow Jones & Company, Inc., the New York Times Company and the Financial Times Ltd. to Intervene for the Limited Purpose of Objecting to the Motion* [Docket No. 196]. The Committee, in support of this Joinder, respectfully states as follows:

1. Public access to judicial proceedings and the significance of transparency in bankruptcy cases is important. Indeed, two of the Committee’s goals in these Chapter 11 Cases are (i) to ensure that the pertinent facts underlying the fraudulent and criminal acts of the former principals of the Debtors are brought to light and shared with the public and (ii) to help create transparency, credibility and trust in these Chapter 11 Cases in the wake of the fraud-induced collapse of FTX. However, public access to court records is not absolute and where there are circumstances warranting the protection of sensitive information such as those that exist here, temporal privacy is the far better course of action. As described below, the Committee agrees with the Debtors that the sealing of all personally identifying information related to the Debtors’ customer list, including, without limitation, each of the Debtors’ customers’ names, addresses,

telephone numbers, and email addresses (collectively, the “Confidential Customer Information”) is warranted under both section 107(b) and section 107(c) of Bankruptcy Code.

2. To best balance the competing interests in these Chapter 11 Cases and to avoid costly litigation at their outset, the Committee and the Debtors have agreed to limit the request that the Confidential Customer Information be under seal to an initial six month period, subject to the right of the Debtors and the Committee to seek a further extension. This relatively short period of time strikes a fair balance between the general policy favoring disclosure and the need to give the necessary time to the Debtors and the Committee to get their feet under them in the wake of the Debtors’ chaotic and rapid free fall bankruptcy filing to assess (i) the value of the Confidential Customer Information and its nexus to the Debtors’ assets, whether they be monetized or reorganized, and (ii) the potential physical, emotional, and economic harm that disclosure of the Confidential Customer Information would have on the Debtors’ customers and other creditors.

3. Section 107(b) of the Bankruptcy Code gives this Court the authority to restrict public access to commercially sensitive information. Specifically, pursuant to section 107(b), once a court determines that a party in interest is seeking the protection of “trade secrets and confidential research, development, and commercial information” “the court is **required** to protect a requesting party and has no discretion” to deny a motion to seal. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original). Courts have held that commercial information includes “information which would result in an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Altegrity, Inc.*, No. 15-10226 (LSS), 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) (internal quotation marks and citation omitted). The public dissemination of the Confidential Customer Information would provide an unfair advantage to the Debtors’ competitors and should be restricted here.

4. FTX was intended to be the cryptocurrency exchange for the masses. Over the past few years, the Debtors spent tens of millions of dollars on advertising and branding deals to achieve their goal of scaling up, including, among other things, buying the naming rights for the FTX Arena, entering into sponsorship deals with celebrity athletes including Tom Brady, Naomi Osaka, Stephen Curry and Shohei Ohtani, setting up partnerships with teams like the Golden State Warriors and Washington Capitals, and airing a prime-time Super Bowl commercial featuring Larry David. (*See FTX Spent Big on Sports Sponsorships. What Happens Now?*, N.Y. TIMES (Nov. 10, 2022), available at <https://www.nytimes.com/2022/11/10/business/ftx-sports-sponsorships.html>.) FTX's advertising blitz apparently worked; the Debtors estimate that their customer list includes more than 9 million customer names and contact information.

5. The Debtors' customer list, as a result, presents a unique and valuable asset of the Debtors, which should be protected from disclosure for the benefit of all the Debtors' creditors. The Committee and its professionals, in conjunction with the Debtors and their professionals, are in the process of analyzing both the potential to reorganize and restart the FTX exchanges and/or otherwise monetize FTX's vast trove of customer data. That exercise would be severely jeopardized if one of the Debtors' key assets – its customer list – is filed in an unreacted form and available to any potential counterparty or competitor. *See, e.g., In re Cred Inc.*, Dec. 18, Hr'g Tr. at 113:20-114:2,² Case No. 20-12836 (JTD) (Bankr. D. Del. Dec. 18, 2020) (recognizing that "there is at least some credible argument that the creditor list – which is, also, in this case, the customer list of . . . the debtors . . . has some intrinsic value, and that disclosure of that list could affect the ability of the debtors to market and sell that list as a part of their going toward a plan of reorganization

² A copy of the hearing transcript is annexed hereto as Exhibit A.

here.”)³; *Altegriety*, 2015 WL 10963572, at *4 (holding debtors’ list of customers and independent contractors was confidential commercial information and subject to seal pursuant to section 107(b)); *In re Faucett*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010) (similar); *In re Nunn*, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985) (similar).

6. In addition to warranting protection pursuant to section 107(b) of the Bankruptcy Code, section 107(c) provides an independent basis for sealing the Confidential Customer Information. “Section 107(c) gives the court broad discretion to protect an individual with respect to any information, including identifying information, in a paper filed or to be filed with the court to the extent that the court finds that disclosure of the information would create an undue risk of identity theft or unlawful injury to the individual or the individual’s property.” 2 Collier on Bankruptcy ¶ 107.04 (16th ed. 2022). The type of information protected from disclosure under section 107(c) includes information “that may be used, alone or in conjunction with other information to identify a specific individual.” *In re Endo Int’l plc*, No. 22-22549 (JLG), 2022 WL 16640880, at *10 (Bankr. S.D.N.Y. Nov. 2, 2022) (internal citations and quotations omitted). The Confidential Customer Information falls squarely within the type of information protected from disclosure under section 107(c) of the Bankruptcy Code.

³ The Committee is aware of the decision by the Bankruptcy Court in *In re Celsius Network, LLC*, 644 B.R. 276 (Bankr. S.D.N.Y. 2022) (“*Celsius*”), but respectfully disagrees with the conclusion reached in that case with respect to sealing information similar to the Confidential Customer Information. Not only is the *Celsius* decision not binding on this Court, especially in light of this Court’s decision in *Cred*, but the facts and circumstances of these Chapter 11 Cases are far different than those in *Celsius*; the FTX global exchange platform is enormous and these Chapter 11 Cases involve the rapid and fraud-laden free fall of the enterprise. As a procedural matter, the Debtors and Committee are now asking only for a six month initial sealing window in order to do the work necessary to evaluate the value and sensitivity of the Confidential Customer Information in the circumstances of these Chapter 11 Cases, and, according to the court in that case, the *Celsius* debtors failed to provide a sufficient evidentiary record for such relief. Here, at the appropriate time, the Debtors and Committee will be prepared to brief the issues and provide a robust evidentiary record to support any permanent relief.

7. To the extent the Court is not inclined to grant the Motion and order the Confidential Customer Information to be sealed for the next six months at this time (subject to requests for further extensions), the Committee respectfully requests that the hearing on the Motion be adjourned to a later date to provide the Debtors and the Committee with the opportunity to further brief the issues and have an evidentiary hearing.⁴

8. The Committee reserves all rights to amend and/or supplement this Joinder and to make arguments as may be applicable, including, but not limited to, as a result of information learned subsequent to the filing of this Joinder.

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⁴ The Committee reserves all rights to bring an independent motion before this Court seeking to seal all Confidential Customer Information pursuant to section 107(c) of the Bankruptcy Code.

Dated: January 8, 2023
Wilmington, Delaware

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
CRED INC., et al., . Case No. 20-12836 (JTD)
. Courtroom No. 5
. 824 North Market Street
. Wilmington, Delaware 19801
. .
Debtors. . December 18, 2020
. . 9:30 A.M.

TRANSCRIPT OF TELEPHONIC SECOND DAY HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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1 MATTERS GOING FORWARD:

2 **Cash Management.** Motion to Debtors to (A) Continue to Operate
3 their Cash Management System, (B) Honor Certain Prepetition
4 Obligations Related Thereto, (C) Maintain Existing Business
5 Forms, and (D) Continue to Perform Intercompany Transactions;
6 (II) Granting Administrative Expense Status to Post Petition
7 Intercompany Balances; (III) Waiving Requirements of Section
8 345(b) of the Bankruptcy Code; and (IV) Granting Related
9 Relief [Docket No. 7, 11/08/20]

10 **Ruling: Order Entered**

11 **Employee Wages.** Motion of Debtors for Entry of Interim and
12 Final Orders (I) Authorizing Debtors to (A) Pay Employee
13 Obligations and (B) Continue Employee Benefit Programs, and
14 (II) Granting Related Relief [Docket No. 11, 11/08/20]

15 **Ruling: Order Entered**

16 **Motion to Extend.** Debtors' Motion for Entry of Order
17 Extending Time to File Schedules and Statements of Financial
18 Affairs [Docket No. 67, 11/18/20]

19 **Ruling: Order Entered**

20 **Bar Date Motion.** Motion of Debtors, Pursuant to Bankruptcy
21 Code Sections 105(a), 502, and 503 and Bankruptcy Rule 2002,
22 for Entry of an Order (I) Fixing Deadline for Filing Proofs of
Claim and (II) Approving Form and Manner of Notice Thereof
[Docket No. 52, 11/17/20]

23 **Ruling: 128**

24 **Bid Procedures Motion.** Debtors' Motion for Entry of Orders
25 (I) (A) Approving Bidding Procedures, (B) Scheduling an
Auction and Sale Hearing and Approving Form and Manner of
Notice Thereof, and (C) Approving Assumption and Assignment
Procedures and Form and Manner of Notice Thereof; and (II)
Authorizing (A) the Sale(s), Free and Clear of all Liens,
Claims, Interests, and Encumbrances, and (B) Assumption and
Assignment of Executory Contracts and Unexpired Leases [Docket
No. 65, 11/18/20]

26 **Ruling: Order Entered**

27 **MACCO Retention Application.** Debtors' Application for Entry
28 of an Order Authorizing Employment and Retention of MACCO
29 Restructuring Group LLC as Financial Advisor for Debtors,
Effective Nunc Pro Tunc to Petition Date [Docket No. 57,
11/17/20]

1 **Ruling: Order Entered**

2 **Teneo Retention Application.** Debtors' Application for Entry
of an Order Authorizing Employment and Retention of Teneo
3 Capital LLC as Investment Banker for Debtors, Effective Nunc
Pro Tunc to November 16, 2020 [Docket No. 63, 11/18/20]

4 **Ruling: Order Entered**

5 **Paul Hastings Retention Application.** Debtors' Application for
Entry of an Order Authorizing Employment and Retention of Paul
6 Hastings LLP as Counsel to Debtors, Effective as of Petition
7 Date [Docket No. 64, 11/18/20]

8 **Ruling: Taken Under Advisement**

9 **Sonoran Capital Retention Application.** Debtors' Motion for
Entry of an Order (I) Authorizing Employment and Retention of
10 Sonoran Capital Advisors, LLC to Provide Debtors a Chief
Restructuring Officers and Certain Additional Personnel and
11 (II) Designating Matthew Foster as Debtors' Chief
Restructuring Officer [Docket No. 95, 12/1/20]

12 **Ruling: Taken Under Advisement**

13 **Creditor List.** Motion of Debtors for Entry of Interim and
Final Orders (I) Authorizing Debtors to File a Consolidated
List of Debtors' 30 Largest Unsecured Creditors, (II)
14 Authorizing Debtors to Serve Certain Parties by E-Mail, (III)
15 Authorizing Debtors to Redact or Withhold Publication of
16 Certain Personal Identification Information, and (IV) Granting
17 Related Relief [Docket No. 6, 11/08/20]

18 **Motion to Seal.** Motion to File Under Seal Certain
Confidential Information Pursuant to Order (I) Authorizing
Debtors to File A Consolidated List of Debtors 30 Largest
Unsecured Creditors, (II) Authorizing Debtors to Serve Certain
19 Parties by E-Mail, (III) Authorizing Debtors to Redact or
Withhold Publication of Certain Personal Identification
Information On An Interim Basis, And (IV) Granting Related
20 Relief [Docket No. 61, 11/18/20]

21 **Ruling: Orders Entered**

22 **Motion to Convert.** Motion of Krzysztof Majdak and Philippe
Godineau for Entry of an Order Pursuant to 11 U.S.C. § 1112(b)
23 (I) Dismissing the Cases; (II) Converting the Cases to a
24 Chapter 7 Liquidation; or (III) Appointing a Chapter 11
25 Trustee [Docket No. 62, 11/18/20]

Ruling: 94

1 DEBTORS' WITNESS (s)2 **CHRISTOPHER WU**

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5	Cross-examination by Mr. Sarachek	15
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9 **PABLO BONJOUR**

10	Direct examination by Mr. Grogan	26
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MATTHEW FOSTER

17	Direct examination by Mr. Grogan	57
18	Cross-examination by Mr. McMahon	61
19	Cross-examination by Mr. Pierce	63
20	Redirect examination by Mr. Grogan	65
21	Redirect examination by Mr. Cousins	66

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EXHIBITS:ID Rec'd

25	Declaration of Daniel Schatt	10
	Declaration of Christopher Wu	15

1	Declaration of Pablo Bonjour	35
2	Debtor's Exhibit 38 - Thirteen Week Cash Forecast	41
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1 (Proceedings commenced at 9:34 a.m.)

2 OPERATOR: The record has begun and we are now
3 live.

4 THE COURT: Thank you.

5 Good morning, everyone. This is Judge Dorsey.
6 We're on the record in Cred, Inc.; Case No. 20-12836.

7 Before we begin this morning, I just want to let
8 everybody know that we have until noon today and then I will
9 have to stop. So, we will get as far as we can today.
10 Hopefully we can get through, at least, the current motions
11 we have been talking about; the motions to convert or to
12 appoint a Chapter 11 Trustee.

13 Also, a reminder for people in the waiting room,
14 you have to use your proper name and it has to be able to be
15 compared to the CourtCall sheet or we do not let you in, in
16 order to avoid people trying to gain access to disrupt the
17 proceedings.

18 Also, we have fifty-one people on the call, on the
19 Zoom today. So, if you want to be heard on an issue please
20 us the raise your hand function on Zoom which you can access
21 by clicking on "Participants" on the bottom of the Zoom
22 screen, it brings up the dialog box and one of the options is
23 "Raise Your Hand" and then I can identify who wants to speak.
24 It also moves you to the top left corner of my screen so it
25 makes it easier for me to identify who is talking.

1 So with that, yesterday we were in the middle of
2 the debtor's case in chief. I believe we finished the
3 examination of Mr. Lyon. And I will go ahead and turn it
4 over to Mr. Grogan. Are you going to handle the next
5 witness?

6 MR. GROGAN: Yes, Your Honor. Thank you very
7 much. James Grogan from Paul Hastings on behalf of the
8 debtors for the record.

9 Your Honor, before we call the first witness I did
10 want to let the court know that overnight we reached
11 agreement with the U.S. Trustee on how to proceed with Mr.
12 Schatt's testimony.

13 First, I do apologize that we were unable to get
14 him to testify live; that is on us, and I just apologize to
15 the court. I'm sorry that happened.

16 The accommodation we have reached is that we're
17 going to submit his deposition transcript in full. I think
18 that Mr. McMahon was okay with that. I will let him respond.

19 THE COURT: Mr. McMahon?

20 MR. MCMAHON: Your Honor, good morning. Joseph
21 McMahon for the United States Trustee.

22 That is acceptable to the U.S. Trustee, Your
23 Honor.

24 THE COURT: Okay. So, I will admit the deposition
25 transcript of Mr. Schatt in its entirety. What was the

1 exhibit number for that one, Mr. McMahon?

2 MR. MCMAHON: One moment, Your Honor. I believe
3 it was -- it's Exhibit U.S. Trustee 18, Your Honor.

4 THE COURT: All right. U.S.T. Exhibit 18 is
5 admitted.

6 (Declaration of Daniel Schatt, received into evidence)

7 MR. MCMAHON: Thank you, Your Honor.

8 MR. GROGAN: Thank you, Your Honor.

9 Your Honor, our first live witness, then, will be
10 Christopher Wu from Teneo.

11 THE COURT: Okay. Mr. Wu, are you on Zoom?

12 MR. WU: Yes, I am.

13 THE COURT: There we go. Mr. Wu, can you place
14 your -- raise your right hand and state your full name for
15 the record, and spell your last name please.

16 MR. WU: My name is Christopher Wu. My last name
17 is spelled W-U.

18 CHRISTOPHER WU, DEBTOR WITNESS, SWORN

19 THE COURT: Mr. Grogan, you may proceed.

20 MR. GROGAN: Thank you.

21 DIRECT EXAMINATON

22 BY MR. GROGAN:

23 Q Mr. Wu, can you tell the court, you know, where you
24 work and what your experience is?

25 A My name is Chris Wu. I serve as president and senior

1 managing director of Teneo Capital. And I run the
2 restructuring group at my firm. I have been in my capacity
3 at Teneo for the last four years. I have been an investment
4 banker for twenty-five years. The first six years of my
5 career were with JPMorgan in the M&A group. And the last
6 nineteen were focused on distress and restructuring
7 investment banking. For fourteen years I worked at a mid-
8 market boutique by the name of Carl Marks where I served as
9 co-manager and member of the management committee of Carl
10 Marks Advisors before coming to Teneo four years ago.

11 Q Thank you.

12 How many Section 363 sales have you run, if you have an
13 estimate?

14 A Well, I personally managed over a hundred restructuring
15 engagements of which about half, around fifty, have been in-
16 court 363 sales or plan sales on behalf of both debtors and
17 creditors. On behalf of debtors I have certainly run over
18 twenty.

19 Q And have you handled DIP financings, post-petition
20 financings?

21 A I have. I have originated and structured numerous DIP
22 financings; too many for me to recall.

23 Q I understand.

24 So what was the -- can you tell the court a little bit
25 about the purpose of your engagement in this case?

1 A Yes. I was engaged in order to market the debtor's
2 business as a going concern and canvass the market for
3 strategic interest principally. Working with me on this
4 engagement are some colleagues from my firm; notably, experts
5 in FinTech as well as a subject matter expert in crypto. And
6 we have solicited interest from a variety of different spaces
7 including crypto, as well as FinTech, as well as asset
8 managers and brokerages in order to elicit interests for
9 credit as a going concern. I was also engaged in order to
10 obtain DIP financing as well as exit financing.

11 Q Thank you.

12 How is the asset sale process going? Have you started
13 and where does it stand currently?

14 A So we were retained by the debtor's mid-November and it
15 became clear to me, personally, immediately that this was an
16 urgent situation in which we needed to run a very expedited
17 sale process for a variety of different reasons.

18 So, you know, within my own field of experience I can
19 certainly testify that we're running a more expedited process
20 then I can recall in my career. That being said, there were
21 already four companies that had solicited Cred as we were
22 being retained and we immediately engaged with those four
23 parties. And we were in the market, maybe a week, soliciting
24 other interests.

25 So, you know, in my view we had a fairly active process

1 of interested parties. We had reached out to over eighty
2 parties of whom twelve have signed non-disclosure engagements
3 and we are -- we have a data room in which bidders are
4 actively involved in. And, you know, obviously, the deadline
5 to submit an offer to serve as a stalking horse is fairly
6 imminent. It's early in the new year. So, we are actively
7 in a stalking horse identification/selection process.

8 Q Thank you.

9 What do you think the appointment of a trustee would be
10 on that process?

11 A In my opinion the appointment of a Chapter 11 Trustee
12 would delay things. It's hard to predict, but I would think
13 that a Chapter 11 Trustee would still want to, you know, reap
14 whatever benefits we may produce as a result of the sale
15 process in any case. So, we would want to continue with that
16 process, but it would be up to, obviously, the trustee to
17 determine the best course of action at that point in time.

18 Q And you testified earlier that you're running an
19 expedited process here. Why is that?

20 A Well I have had some experience with FinTech
21 (indiscernible). I have had some experience with people
22 intensive, IP intensive businesses. And it's important to
23 hold the business together in order to attract interest as a
24 going concern. You know, in my own view strategic bidders
25 (indiscernible) this on or create such a platform on its own

1 it would take time, money and knowledge.

2 So, I think that is part of what we are marketing in
3 addition to a framework of operating in the United States
4 with licenses (indiscernible) operating framework to learn
5 crypto which is still (indiscernible) industry. And the
6 utility, clearly, of learning crypto. A lot of investors are
7 very much of a buying mentality. So, getting it done in
8 crypto is still viewed as an important function as the market
9 develops.

10 Q Has the -- are prospective bidders aware of the motions
11 that are pending to appoint a trustee?

12 A Certainly the bidders and certainly the lenders most
13 certainly are aware. I have not asked everyone if they are
14 watching the courtroom proceedings, but I have been asked on
15 many of them, you know, what, in my opinion, is happening.
16 And they are observing these proceedings. In some cases I
17 believe it's led to some delay in terms of galvanizing their
18 activity.

19 I sense that there is a little bit of wait and see
20 approach in some of the comments by other witnesses have not
21 necessarily been helpful to the process.

22 MR. GROGAN: Thank you, Mr. Wu.

23 Your Honor, that is all the questions I have for
24 Mr. Wu in terms of live testimony. I also would like to move
25 to introduce his declaration which was filed at Docket No.

1 109-4

2 THE COURT: Is there any objection?

3 (No verbal response)

4 THE COURT: Okay. It's admitted without
5 objection.

6 (Declaration of Christopher Wu, received into evidence)

7 MR. GROGAN: I will yield the witness.

8 THE COURT: Mr. McMahon, any cross?

9 MR. MCMAHON: Very briefly, Your Honor.

10 CROSS EXAMINATION

11 BY MR. MCMAHON:

12 Q Mr. Wu, good morning.

13 The Chapter 11 Trustee, if appointed, would have the
14 option of continuing the sale process, correct?

15 A I think that would be up to the Chapter 11 Trustee.
16 Certainly, we would avail ourselves to the extent that our
17 services are needed and deemed relevant for the debtors.

18 MR. MCMAHON: No further questions, Your Honor.

19 THE COURT: Thank you, Mr. McMahon.

20 Mr. Sarachek, any cross?

21 MR. SARACHEK: Yes.

22 CROSS EXAMINATION

23 BY MR. SARACHEK:

24 Q Mr. Wu, good morning.

25 Are you familiar with Celsius, BlockFi, and Genesis?

1 A I'm familiar with them.

2 Q How does this debtor -- are they competitors to this
3 debtor?

4 MR. GROGAN: Objection; outside the scope of
5 direct.

6 THE COURT: Overruled. You can answer, Mr. Wu.

7 THE WITNESS: I am certainly not an expert in each
8 of those companies, so I am not qualified to comment on the
9 nature of those companies and how they engage business. My
10 general understanding is that there are most certainly areas
11 of overlap with the debtors.

12 BY MR. SARACHEK:

13 Q What is the unique IP that this debtor has that
14 Celsius, BlockFi, and Genesis don't have?

15 A I think that is also out of the scope of my expertise
16 and I'm not in a position to differentiate business models.
17 You know, I do think that there are elements of the business
18 that are interesting to such party, but beyond that I really
19 can't speculate as to what would be in such party's -- you
20 know, what is in their mind.

21 Q You're running the sale process, correct?

22 A Correct.

23 Q What are you marketing then?

24 A Well, we're marketing approximately (indiscernible)
25 employees. Seven or eight of them are in the engineering

1 functions and technical functions. Several of them are in
2 the product and operations. As I testified earlier there is,
3 you know, a scope of operations in which the lender lends
4 crypto, has the license to lend in three states. They have
5 customers that are over 100,000. They have KYC
6 (indiscernible). They have a number of active users and they
7 have their own future of in terms of utility tokens. So, it
8 certainly was a leader in crypto lending amongst a handful of
9 companies. And (indiscernible).

10 Q But the debtor isn't lending now, right?

11 A The debtor is not lending now.

12 Q So there is really no -- you said one of the things
13 you're marketing is these licenses which, presumably, require
14 state approval and there is no ongoing lending operations
15 going on right now, correct?

16 A Correct.

17 Q Are any of the parties that you are talking to
18 creditors of the debtor?

19 A Not to my knowledge, but even if they were I wouldn't
20 be in a position to disclose that.

21 MR. SARACHEK: I do think it's relevant, Your
22 Honor.

23 BY MR. SARACHEK:

24 Q Are any of the parties that you're talking to insiders
25 of the debtor?

1 (No verbal response)

2 Q Do you know what the word "insider" means?

3 A Yes, I do. I'll go with the same response which is the
4 truth. Not to my knowledge, but even if they were I wouldn't
5 be in a position to disclose that to you.

6 MR. SARACHEK: Your Honor, I think it's relevant.

7 THE COURT: I think what Mr. Wu is saying is he's
8 not aware whether any of them are insiders or whether any of
9 them are competitors, but he is not in a position -- even if
10 he did know that they were he's not in a position to disclose
11 who they are because its confidential at this time because
12 they're trying to market the company. We don't want to
13 disclose who the potential bidders are publicly.

14 BY MR. SARACHEK:

15 Q Mr. Wu, have you worked with Chapter 11 Trustees
16 before?

17 A I have not.

18 Q Do you have any reason to believe that a Chapter 11
19 Trustee wouldn't do what's in the best interest of the
20 debtor?

21 A I don't, but my knowledge isn't based on personal
22 experience. As I just said I have not worked with a Chapter
23 11 Trustee.

24 Q Are you aware with respect to Cred Capital that James
25 Alexander has raised the issue that the assets of Cred

1 Capital are not the debtors and that the debtor did not have
2 authority to file?

3 MR. GROGAN: Objection, Your Honor; outside the
4 scope of direct.

5 THE COURT: Overruled.

6 MR. EVANS: This is Joe Evans from the committee.
7 Objection; hearsay, Your Honor.

8 THE COURT: I don't see how there is any hearsay.
9 He's asking him if he has knowledge of it.

10 Go ahead, Mr. Wu, you can answer.

11 THE WITNESS: All right. Can you repeat the
12 question, Mr. Sarachek?

13 BY MR. SARACHEK:

14 Q Sure, Mr. Wu.

15 Are you aware that James Alexander has raised in court
16 pleadings, in filings, that Cred Capital -- that the debtor
17 did not have authority -- the debtor's directors did not have
18 authority to file Cred Capital and, thus, those assets,
19 arguably, are not property of the estate if the court so
20 rules?

21 A I'm aware of the issue.

22 Q Have any parties -- have any prospective buyers raised
23 this issue to you as a reason that the debtor's assets might
24 be less?

25 A No, none have.

1 Q Are you aware of the fraud allegations that have been
2 raised by the debtor in the bankruptcy case?

3 A I'm aware.

4 Q Have any parties raised the fraud issues to you with
5 respect to the lending licenses?

6 A None have.

7 Q I'm sorry?

8 A None have.

9 Q Are you aware of the motion filed by UpgradeYa with
10 respect to the Bitcoin collateral that they assert is their
11 property?

12 A I have not reviewed their motion. So, I am not
13 specifically informed.

14 Q So you are not aware that collateral -- that the debtor
15 is asserting may not be theirs?

16 A I have no idea --

17 MR. GROGAN: Objection. It misstates -- excuse me.
18 Objection; misstates his earlier testimony.

19 THE COURT: Sustained.

20 BY MR. SARACHEK:

21 Q How will effect a sale, Mr. Wu, if UpgradeYa is
22 successful in their lift stay motion?

23 MR. GROGAN: Objection; lack of foundation.

24 THE WITNESS: I told you --

25 THE COURT: Hold on, Mr. Wu. Don't respond. You

1 have an objection from your counsel.

2 Mr. Grogan?

3 MR. GROGAN: Objection; lack of foundation, Your
4 Honor.

5 THE COURT: Sustained.

6 BY MR. SARACHEK:

7 Q Mr. Wu, are you aware that UpgradeYa has asserted an
8 interest in Bitcoin that is in the debtor's possession?

9 A I actually wasn't. So, I'm repeating my answer again.

10 Q Are the parties that you're talking to proposing to buy
11 all assets of the debtor including any Bitcoin or other
12 cryptocurrencies that the debtor has in its wallets?

13 A I'm not in a position to disclose that to you.

14 MR. SARACHEK: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Redirect, Mr. Grogan?

17 MR. GROGAN: Thank you, Your Honor.

18 MR. PIERCE: Your Honor, I have --

19 THE COURT: Hold on a second.

20 MR. PIERCE: Your Honor, Matthew Pierce with
21 Landis, Rath & Cobb on behalf of UpgradeYa.

22 We have a few cross examination questions for Mr.
23 Wu if we may.

24 THE COURT: Do they relate to your motion to lift
25 the stay or to the motions that are currently pending before

1 me?

2 MR. PIERCE: The motions that are currently
3 pending as UpgradeYa joined in the U.S. Trustee and the
4 movants Chapter 7 conversion motion.

5 THE COURT: All right. Go ahead.

6 CROSS EXAMINATION

7 BY MR. PIERCE:

8 Q Mr. Wu, the sale doesn't contemplate continuation of
9 past business of the debtors, correct?

10 A The marketing is the platform in terms of past business
11 practices or go-forward business practices, that would be up
12 to the discretion of the bidder.

13 Q And if you're selling a platform that could be sold
14 through a Chapter 7 process, correct?

15 A Anything can be sold through a Chapter 7 process.

16 Q And are you --

17 A (Indiscernible) --

18 Q -- the debtors need to sell any --

19 THE COURT: Hold on. He wasn't finished
20 answering.

21 Go ahead, Mr. Wu.

22 THE WITNESS: I said anything can be sold through
23 a Chapter 7 process if there's a (indiscernible) values or
24 outcomes.

25 BY MR. PIERCE:

1 Q But it is possible that they could be sold through a
2 Chapter 7 process?

3 A Of course.

4 Q And are you seeking to sell any of UpgradeYa's assets
5 or claims against the estate?

6 A As I testified before I haven't read your client's
7 motion, so I am not familiar with the nature of UpgradeYa's
8 claims.

9 Q And are the debtors -- sorry, continue.

10 A It hasn't come up.

11 Q And just to clarify, are the debtors marketing any
12 claims against the estate?

13 A The debtor's assets certainly are available. You know,
14 principally, we are focused on marketing the platform, but as
15 I mentioned before we are also soliciting interest for
16 financing as well.

17 Q I just want to clarify, is it your testimony that the
18 estate could be or is marketing the estate's affirmative
19 claims against third parties?

20 A No. Obviously, our job as debtor's representatives are
21 to maximize value for the estate/

22 Q Which means that --

23 A So --

24 Q -- it could include claims that the estate has against
25 third parties, correct?

1 A They may or may not. (Indiscernible) in the process to
2 determine that.

3 Q And are any of the targets of those potential claims
4 prospective purchasers in the debtor's sale process?

5 A Not that I'm aware of, but, again, even if I was I
6 wouldn't be in a position to disclose that.

7 Q But they could be, correct?

8 A Anything is possible.

9 MR. PIERCE: Your Honor, I don't have any further
10 questions.

11 Just one point that I would like to clarify for
12 the record before I cede the virtual podium is that Mr.
13 Saracheck does not represent UpgradeYa. We are counsel to
14 UpgradeYa and his testimony was not coordinated in any way --
15 his questioning was not coordinated in any way with
16 UpgradeYa. I just wanted to clarify that for the record.

17 With that, Your Honor, I'd cede the virtual
18 podium.

19 THE COURT: All right. Mr. Grogan, any redirect?

20 MR. GROGAN: Yes, Your Honor, very quickly.

21 REDIRECT EXAMINATION

22 BY MR. GROGAN:

23 Q Mr. Wu, are you currently negotiating with Daniel
24 Schatt to sell the business to Mr. Schatt?

25 A I am not.

1 Q Are you currently negotiating with Lu Hua, H-U-A, to
2 sell the business to Mr. Hua?

3 A I am not.

4 Q Are you currently negotiating with Mr. Daniyal
5 Inamullah to sell the business to Mr. Inamullah?

6 A No.

7 Q Are you currently negotiating with Mr. James Alexander
8 to sell the business to Mr. Alexander?

9 A No.

10 Q In your experience would you expect to get a better
11 value in Chapter 11 than Chapter 7 for these assets?

12 A I would. I would expect so.

13 MR. GROGAN: Your Honor, no further questions.

14 THE COURT: Thank you.

15 Mr. Wu, you are excused. You may step down from
16 the virtual witness stand.

17 (Witness excused)

18 THE COURT: Mr. Grogan, your next witness.

19 MR. GROGAN: Thank you, Your Honor.

20 Your Honor, I call Pablo Bonjour to the witness
21 stand.

22 THE COURT: Mr. Bonjour, do you want to take --
23 are you on the Zoom? I see you there, yes. Can we --

24 MR. BONJOUR: Yes. Can you hear me okay, Judge?

25 THE COURT: I can. Mr. Bonjour, would you please

1 raise your right hand, state your full name for the record
2 and spell your last.

3 MR. BOUNJOUR: My name is Pablo Bonjour. Last
4 name is spelled B-O-N-J-O-U-R.

5 PABLO BONJOUR, DEBTOR WITNESS, SWORN

6 THE COURT: Mr. Grogan?

7 MR. GROGAN: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GROGAN:

10 Q Mr. Bonjour, can you tell the court where you work and
11 what your job description is?

12 A Sure. So I am a managing director at MACCO
13 Restructuring Group. We are an interim management services
14 company. We specialize in financial advisory services
15 primarily to middle market companies who find themselves in
16 either a combination of financial or operational distress.

17 Q And how long have you been working in the distressed
18 restructuring space?

19 A So I've got about thirty years of business experience,
20 half of that is in investment banking. I was at Oppenheimer,
21 Lehman Brothers. At one time I owned my own propriety
22 interest and brokerage firm, that was (indiscernible) FTC
23 Brokerage Operation. The other half has been in consulting,
24 starting off with advising commodities companies, turning
25 them around eventually led me to Chapter 11's, liquidations,

1 and Chapter 7's.

2 Q And have you worked with cryptocurrency before?

3 A I have, yes. So, I also owned a business called
4 SouthCoast Management Group. I was (indiscernible) at the
5 time; however, for about the ten years that I ran that
6 company we had multiple clients who engaged us in consulting
7 for Bitcoin. We had a client out of Canada that was
8 installing or trying to win contracts through Canada to
9 implement, essentially, Bitcoin ATM machines at airports.

10 About three years ago I took over a company called
11 American Financial Holdings that owns or developed its own
12 cryptocurrency. We trademarked it. And with that entity I
13 have applied for an international financial entity license
14 through Puerto Rico and that's currently through the second
15 half -- there's two parts to that process. I'm at the tail
16 end of the first half of that.

17 Q So what have you been doing for the debtor since the
18 case was filed?

19 A So the first thing that we did is we got in there and,
20 you know, obviously, wanted to understand the business model,
21 interviewed everybody, looked at the financials. To
22 summarize what we have been doing we built a thirteen week
23 cash-flow model. We have developed the first draft of the
24 schedules and statements. We have also been working on MR's
25 this week, they're almost done. We attended the IDI

1 interview. We testified there. When the CRO was appointed
2 we also transitioned all the information that we had learned
3 over to him, also to the independent director, Grant Lyon.

4 Q So is it fair to say that at this point you have a
5 somewhat of an understanding of Cred's financial condition?

6 A Yes. We have -- so we have a pretty good thirteen week
7 forecast that outlines everything fairly accurately. We also
8 have a good understanding of where the assets or what assets
9 they have right now.

10 Q And have you done any investigations into the
11 prepetition financial status of the debtor?

12 A Yes. With regard to that, so when we went into a
13 company we were waiting for them to give us their financials.
14 After a couple of weeks of delays we actually asked for
15 access to their online systems which they, you know, gave to
16 us. We then realized at that point that the company had not
17 reconciled their books throughout the year. They had
18 actually taken all their transactions and booked them to sub-
19 ledgers, and they did not run it up through their internal
20 accounting system.

21 So, the debtor continues to reconcile their books. We
22 have helped them with that. We're not reconciling it for
23 them. What we're doing is helping them to characterize
24 transactions properly. We then hand it over to them. They
25 review it and then they certify that it's accurate under

1 penalty of perjury.

2 Q And who are you working wiht on that process?

3 A The lead on that, at our firm, is Paul Maniscalco.

4 He's an MD with twenty-five years of experience as a CPA.

5 He's a forensic accountant. And we have three or four other
6 people on our team. And they coordinated that effort with
7 the controller at Cred, two or three of their staff, and the
8 CFO, and COO.

9 Q And who is the current CFO at Cred?

10 A The current CFO is Scott Wiley who was recently
11 appointed after Joe Podulka, the previous Cred CFO, was let
12 go. He is with Scott (indiscernible) Capital.

13 Q And have you investigated any of the prepetition
14 cryptocurrency trades that the company engaged in?

15 A Yes. So, one of the biggest challenges that we had
16 here is really kind of a lack of information. So, part of
17 our process was to request as much information, try to find
18 as much as possible. So, that was a big part of our efforts.

19 I was able to get their 2019 trades and also some of
20 the trades for January, February, March. And we have been
21 contacted with JSP-Systems on a weekly basis and they are
22 moments away from delivering to us the most important
23 documents that we have been asking for and have been working
24 with us for the last two weeks which is all the
25 (indiscernible) which kind of show exactly what went into JSP

1 and what went out of JSP because there was, kind of, a
2 triangular relationship between Cred, JSP, MoCredit and those
3 three.

4 Q You heard Mr. Inamullah testify yesterday, didn't you?

5 A Yes.

6 Q Can you tell the court what your views are on the JST
7 trade and the financial impact it had on the debtor's balance
8 sheet?

9 A Sure. Yeah, so this is kind of a -- I mean there are a
10 lot of things going on here. This is kind of the crux of the
11 case and the part that for whatever reason most people have a
12 difficult understanding. So, I just want to give a really
13 brief background as to the business model and then what
14 happened in March.

15 So, in summary throughout 2019 Cred, essentially, would
16 take in Cryptocurrency from their customers Bitcoin,
17 (indiscernible), et cetera, and what they would do is, in
18 turn, take that crypto and either send it directly to an
19 asset manager or more than likely what they did instead is
20 they actually sold it first, about seventy, eighty percent of
21 it, they converted it to fiat USD and they sent it to their
22 primary lender at the time which was MoCredit. MoCredit was
23 paying them sixteen percent rate of interest.

24 So, that was pretty much their business model for most
25 of 2019 as they went into 2020. It was really during 2020

1 where they started to expand with other asset managers. The
2 problem comes in is that while that strategy worked out
3 pretty well for them in 2019 and beginning of 2020, the issue
4 came in that when they would sell their crypto, about
5 seventy, eighty percent of it, they would keep the other
6 twenty or thirty percent and they would use that portion to
7 buy future's contracts to hedge against that sale.

8 So to give you an example is they brought in one
9 Bitcoin from a customer, they would then buy the equivalent
10 of one Bitcoin future's contract. It's a simplistic way to
11 explain it. And as long as they did that then, you know,
12 when Bitcoin prices went up or down it would have been tandem
13 with it. So, they were able to, kind of, hedge any potential
14 liability risk.

15 The problem came in, in March. So from about February
16 15th to mid-March the price of Bitcoin and other
17 cryptocurrencies, which follows suit, dropped from 10,000 to
18 5,000. And when it did that the hedges that (indiscernible)
19 through JST, the future's contracts, was essentially
20 protecting them. They got calls that they were, essentially,
21 sold out of those positions.

22 Conversely, they also ate up the equity that they were
23 using to actually buy those future's contracts. So,
24 effectively, as of March 17th, 2020 Cred was, effectively,
25 short crypto. In other words they owed their customers back

1 cryptocurrency and they didn't have the other side, the
2 future's contracts to hedge against. The price had gone up.
3 So, they are, essentially, making the market and based on
4 your report that we have seen from JST on March 17th, 2020.
5 They were, effectively, according to JST, short the market
6 approximately \$25 million dollars' worth of cryptocurrency.

7 Q Did Cred take steps following that to implement new
8 hedges?

9 A So the first thing that they tried to do is they
10 reached out to MoCredit and MoCredit at the time had, you
11 know, a substantial bulk of their assets that they
12 transferred and they were getting paid sixteen percent rate
13 of interest approximately. And it was at that time that
14 MoCredit announced that because they're a Chinese company,
15 they make micro loans to Chinese gamers, and they actually
16 experienced the COVID-19 virus a few months before the United
17 States, that the Chinese regulators had, essentially,
18 provided to Chinese citizens and other businesses the, I
19 guess, more or less temporary reprieve from having to pay
20 back loans and no interest. Some of that was short term,
21 some of that was supposed to go through 2020.

22 So that was the reason for, at least what Lu Hua
23 claimed at the time as to why he couldn't return any
24 principal. There is some truth to that. I mean we haven't
25 verified that. We have done a little bit of research. Yes,

1 that was kind of the case in China, but we don't know that
2 much about MoCredit. What Lu Hua did instead is he sent over
3 300 Bitcoin, I believe, on March 14th. And so that was, kind
4 of, his contribution to try to help Cred.

5 Q And do you know what happened with that 300 Bitcoin?

6 A So it looked like internally Cred Capital may have
7 spent about seventy-five of it, sixty-five or seventy-five
8 Bitcoin and then the remaining 225 Bitcoin was sent to James
9 Alexander and he took it to, I guess, one of his own wallets
10 or somewhere else; I'm not sure where it went, but it left
11 the Cred eco system.

12 Q And do you know what Cred did with James Alexander
13 after that?

14 A I believe they fired him and they engaged in litigation
15 to try to get that Bitcoin back.

16 Q And are you familiar with a company called Quantocoin?

17 A Yes. So there is a legitimate company out there called
18 Quantocoin and at some point, I believe, either during 2019
19 or early 2020, I'm not sure when, Cred opened an account with
20 what they thought was Quant Coin or Quantocoin. And they
21 sent them 800 Bitcoin. And they had that relationship for
22 about six months.

23 Quantocoin would send them monthly statements showing
24 them here's your 800 Bitcoin, it's now worth 817 Bitcoin.
25 So, you are making money. When they needed money they

1 reached out to that entity and the emails began to bounce at
2 that point when they were requesting principal back. After a
3 couple of weeks of not getting a response they reached out to
4 Quantocoin and it was then that they realized that they had
5 actually given the 800 Bitcoin to, effectively, an imposter
6 because they had never heard of Cred and the imposter
7 actually once of the legitimate employees names as their
8 name. So at that point I believe they realized that that 800
9 Bitcoin was gone and they never had it.

10 Q And are you able to roughly quantify the financial
11 impact of the losses of the hedges, the transfer of the
12 Bitcoin to James Alexander and the loss of the 800 Bitcoin to
13 the fake Quantocoin on the company's balance sheet?

14 A Yes. So -- well, yeah, I mean if we take the current
15 price -- is it okay if I use a calculator?

16 Q Sure.

17 A Okay. So the 800 Bitcoin today would be worth 18
18 million. The biggest one, of course, is the JST conversion.
19 The problem there is that when they converted that crypto and
20 sent to MoCredit we know there's \$39 million at MoCredit that
21 they received, at least, in US dollar or stablecoin.

22 So, the price range when they converted that was around
23 3,500 Bitcoin to about 8 or 9,000 Bitcoin. So, if you take a
24 multiple of that, it may be twofold that exposure liability
25 cap would be probably \$60, \$70 or \$80 million which is

1 probably one of the biggest liability caps. The 300 Bitcoin
2 would be worth almost 7 million.

3 Q Okay. These -- is there anything in that set of facts,
4 though, other than the fact that Mr. Alexander
5 misappropriated assets that is nefarious or, you know,
6 outside the scope of normal business activity?

7 A Your saying not including the 800 Quantocoin?

8 Q Well let me rephrase it.

9 A Okay.

10 Q Was the JST trade an ordinary business decision by the
11 company to effectuate?

12 A Yes.

13 Q And in your experience is it possible for companies to
14 be defrauded by imposters who steal from them?

15 A Yes.

16 MR. GROGAN: Your Honor, I'd like to move, at this
17 point, for the introduction of Mr. Bonjour's declaration into
18 evidence. It was filed on the docket at No. 109-3.

19 THE COURT: Any objection?

20 (No verbal response)

21 THE COURT: Its admitted without objection.

22 (Declaration of Pablo Bonjour, received into evidence)

23 MR. GROGAN: Your Honor, I have no further
24 questions for Mr. Bonjour.

25 THE COURT: Thank you.

1 Mr. McMahon?

2 MR. MCMAHON: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. MCMAHON:

5 Q Mr. Bonjour, good morning.

6 A Good morning.

7 MR. MCMAHON: Could we pull-up Debtor Exhibit 38?

8 MR. PROUTY: Your Honor, this is Austin Prouty
9 with Paul Hastings. Can I request screen sharing permission?

10 THE COURT: Yes, we will get that for you.

11 MR. PROUTY: Thank you, Your Honor.

12 BY MR. MCMAHON:

13 Q Mr. Bonjour, did your firm prepare this thirteen week
14 cash forecast?

15 A Yes, we did.

16 Q Okay. Could we scroll down to the actual sheet?

17 Thank you. And I don't know if there is a way to make
18 those numbers a bit bigger.

19 All right. Mr. Bonjour, I just have some questions
20 regarding this for you.

21 A Sure.

22 Q First, the term in-flows as opposed to income is used
23 on this exhibit. Can you tell me why?

24 A Well the in-flows we wanted to capture knowing that we
25 were going to get in turn of capital and that the business

1 was technically not an operation. We wanted to properly
2 quantify any incoming either revenue or money of inflows.

3 Q Okay. And if we go to -- I want to take a look at the
4 in-flows column for a second.

5 A Sure.

6 Q The term "asset management redemption" what does that
7 mean?

8 A Where are you seeing that? Which line?

9 Q Line Number 1 under in-flows.

10 A Oh, okay. So, these are the asset managers that are
11 returning or due to return cryptocurrency and/or fiat
12 currency back to Cred.

13 Q So, we're talking about assets that were estate
14 property as of the petition date being returned to the
15 debtor's control?

16 A Yes. Correct.

17 Q All right. And the line that's labeled cryptocurrency
18 conversions in (purchased). Can you explain to the court
19 what that line means?

20 A One second. Cryptocurrency conversions?

21 Q Correct.

22 A Okay. Can we come back to that one?

23 Q I guess. Sure.

24 A I don't want to give the wrong answer. I know from a
25 10,000 foot level, but I don't want to guess. So, if we can

1 keep going I will -- when it comes I will give you the
2 answer.

3 Q Okay. But if we go to the totals column all the way on
4 the right of the screen, basically, the debtor's source of
5 operating during these bankruptcy cases primarily comes from
6 those conversions, correct, as a primary matter?

7 A Yes. Correct.

8 Q And then, you know, the asset management redemptions
9 are also a big category, but they are the third largest in
10 that range. Then if we take a look for the --

11 A Yes, I'm sorry. Go ahead.

12 Q The third largest category for the inflows is the
13 interest earned from MoCredit and Elivar [phonetic]. Those
14 are loan repayments, right?

15 A Correct. Those are interest payments on MoCredit and
16 Elivar.

17 Q And they're subject to, I guess, customary commercial
18 risk, right?

19 A Correct.

20 Q I mean the estates have already, I guess, indicated to
21 Mr. Hua that there is a potential for litigation involving
22 MoCredit, correct?

23 A Correct.

24 Q And there's a possibility to Mr. Hua, basically, stops
25 paying interest, correct?

1 A That's a possibility.

2 Q Let's take a look at the in-flows -- strike that.

3 I want to take a look at the operating disbursement

4 Lines 5, 6 and 7.

5 A Okay.

6 Q Now would it be fair to say, sir, that these lines,
7 basically, reflect the cost of maintaining the platform?

8 A Yes. Correct.

9 Q Okay. And they're projected out as if the debtors will
10 be carrying the platform through March 5th, correct?

11 A Yes.

12 Q All right. And if they were to do that, sir, if I
13 understand correctly the -- its \$1,955,040 figure there would
14 be the cost of doing so, correct?

15 A Yes. I mean I can't really see it, but I'm taking your
16 word for it.

17 Q Okay.

18 A That sounds about right.

19 Q So let's now go to the professional fees --

20 A Okay.

21 Q -- section.

22 A Okay.

23 Q So, first, your firm put together these numbers?

24 A Yes.

25 Q All right. And is there a series of like, I guess,

1 assumptions -- strike that.

2 Let me ask a first question. Do they include both the
3 debtors and the professional -- and the committee's
4 professionals?

5 A I believe they do.

6 Q Okay. And with respect to that, the numbers that are
7 here, if we go all the way over to the right you see the
8 number at the end there it's projected the professional fees
9 will be \$5,587,081, correct?

10 A Yes, that is correct.

11 Q And is there any, like, from the next section down
12 which is the accruals, are there any accruals that are not
13 reflected in that number?

14 A Let me take a look. In the professional fees?

15 Q Correct.

16 A So if we're looking at the total I think that is the
17 final total is the \$6.5.

18 Q Correct. Yes.

19 A There are no accruals.

20 Q So when we get to the ending cash-flow at the end of
21 this thirteen week forecast how much cash do the debtors
22 anticipate having at the end of the thirteen week process?

23 A Whatever that number is right there. It's hard for me
24 to see it on the -- is that 192?

25 Q Okay.

1 MR. MCMAHON: Thank you, Mr. Bonjour. I have no
2 further questions.

3 To the extent that, Your Honor, Exhibit 38 is not
4 in evidence I would move for its admission.

5 THE COURT: Any objection?

6 MR. GROGAN: No, Your Honor.

7 THE COURT: Its admitted without objection.

8 (Debtor's Exhibit 38, received into evidence)

9 THE COURT: Mr. Sarachek?

10 CROSS EXAMINATION

11 BY MR. SARACHEK:

12 Q Good morning, Mr. Bonjour. Just a few questions.

13 So you testified that in March of 2020 the debtors had
14 a major catastrophic event, correct?

15 A Yes.

16 Q How did the debtors fund their operations after March
17 of 2020?

18 A I'm assuming they had cash on hand and other accounts,
19 other crypto as well.

20 Q In your investigation, which you testified that you
21 have stared or are undergoing did you see that the debtors
22 were taking customer collateral to fund their operations?

23 A Well as a general business model they would take in
24 the cryptocurrency from all customers equally and then
25 immediately comingle that into one large omnibus account

1 which would then immediately go out to other asset managers
2 like MoCredit and the like.

3 Q Are you familiar, Mr. Bonjour, with the Cred borrow
4 program?

5 A I am.

6 Q Are you aware of UpgradeYa?

7 A I am.

8 Q Are you aware that certain customers like UpgradeYa who
9 participated in the Cred borrow program assert that the
10 debtor is currently holding its collateral?

11 A Yes.

12 Q Does the debtor currently have in its possession enough
13 cryptocurrency collateral to repay all of the Cred borrow
14 lenders?

15 A No, it does not.

16 Q You testified that you and your team were responsible
17 for managing the debtors operations. At the first day
18 hearing the court was provided with a number on the Bitcoin
19 that the debtors had and subsequently the court was provided
20 with a different number. Why was that?

21 A Okay. So a couple of things. First, we were not -- we
22 haven't managed anything, we're just advisors. To your
23 second question the crypto, the amount of Bitcoin that was
24 filed on the petition date I believe was around like 90 or 94
25 Bitcoin from memory. And subsequent to that one of the asset

1 managers on the in-flows turned back to us some of that
2 capital which came in the form of 75 additional Bitcoin
3 units. So we actually have right now 164 Bitcoin total,
4 approximately.

5 Q But that is less than the amount of collateral that the
6 Cred borrowers assert, right?

7 A Right. When you asked me that question earlier I had
8 the 164 in mind, not the lesser amount.

9 Q Up until December 7th, 2020 Mr. Schatt, Mr. Dan Schatt
10 was CEO of the company. What did he do in his capacity as
11 CEO?

12 MR. GROGAN: Objection, Your Honor; lack of
13 foundation.

14 THE COURT: Sustained.

15 MR. SARACHEK: I have no further questions.

16 THE COURT: Thank you.

17 Anyone else?

18 MR. PIERCE: Your Honor, Matthew Pierce on behalf
19 of UpgradeYa. We have a few questions.

20 THE COURT: Go ahead, Mr. Pierce.

21 CROSS EXAMINATION

22 BY MR. PIERCE:

23 Q You're the financial advisor, correct?

24 A Yes.

25 Q And you were responsible for creating these thirteen

1 week forecasts, correct?

2 A Yes.

3 Q And it's your testimony here today that you understand
4 the debtor's cryptocurrency conversion in-flows from a 10,000
5 foot level, correct?

6 A Yes.

7 Q And you don't know -- that means you don't know what
8 the in-flows consist of, correct?

9 A No. I do, I just look at the total where it says total
10 in-flows. I trust my team.

11 Q You can't tell me today what the constituent parts of
12 those total in-flows are, correct?

13 A I can.

14 Q Then what do the cryptocurrency conversion in-flows
15 consist of?

16 A Those are cryptocurrency that are, essentially, being
17 converted to generate cash-flow.

18 Q Can we bring up Debtor's Exhibit 38 please?

19 So I would just like to put your attention to the
20 cryptocurrency conversions purchase line. Do you see that?

21 A Yes.

22 Q And five minutes ago when you were testifying with Mr.
23 McMahon you couldn't tell us what that consisted of, is that
24 correct?

25 A I wasn't sure.

1 Q What's changed in that five minutes?

2 A I pulled up the spreadsheet and I clicked on the cell
3 to see where it went and it went to the next -- I couldn't
4 see it on the laptop, its tiny.

5 Q So you --

6 A I can see the listing though.

7 Q Did you refer to Exhibit 38 as its shown here?

8 A I can't really see the exhibit here. That is why I was
9 relying on Mr. McMahon to read off the numbers. I can't see
10 it so I pulled up a like cash-flow model to refer to.

11 Q So you weren't referring to this document, correct?

12 A Well its almost the exact same thing.

13 MR. PIERCE: But it's different. You know, we're
14 going to ask that the debtors produce that, what you referred
15 to, and we're going to ask that that be introduced into
16 evidence.

17 THE COURT: Mr. Grogan?

18 MR. GROGAN: Your Honor, I don't think this is an
19 appropriate document request. We have already responded to
20 all of their discovery in connection with their motion to
21 lift the stay. And actually --

22 THE COURT: The witness referred to a document
23 during his testimony to refresh his recollection. So that
24 makes that document discoverable. So I am going to order you
25 to turn it over.

1 MR. GROGAN: Okay, Your Honor.

2 BY MR. PIERCE:

3 Q All right. I am going to direct your attention to week
4 thirteen and I will stay focused there and just have a few
5 questions on the numbers set out there.

6 At the end of week thirteen the debtors estimate that
7 they will have an ending cash balance of \$192,088, correct?

8 A Yes.

9 Q And at the end of week thirteen the cash balance does
10 not reflect or is not net of the \$970,000 of accrued
11 professional fees in week thirteen, correct?

12 A Correct.

13 Q And if I direct you towards the bottom you see the line
14 that says net liquidity?

15 A Yes.

16 Q And net liquidity is calculated as the ending cash
17 available plus liquid cryptocurrency asset value less post-
18 petition accrued payables, right?

19 A Okay. The net liquidity equals the ending cash plus
20 the liquid crypto. That's right.

21 Q Okay. So we're in agreement on what net liquidity is,
22 correct?

23 A Yes.

24 Q Okay. So going back to the forecast week thirteen the
25 net --

1 A One second. I'm sorry. Minus the post-petition
2 payables accrued.

3 Q Right. So in week thirteen the debtors estimate that
4 they will have a net liquidity shortfall of \$699,585,
5 correct?

6 A Is that the number on the sheet right there? I can't
7 really see it.

8 Q Can we zoom in so Mr. Bonjour can see that in week
9 thirteen please?

10 UNIDENTIFIED SPEAKER: Is that better, Mr. Pierce?

11 MR. PIERCE: Yes, it is.

12 THE WITNESS: And that is the liquidity, yeah.

13 BY MR. PIERCE:

14 Q Just to make sure that I understand this, even if the
15 debtors start receiving payments from MoCredit January 2021
16 and the debtors sell all of their liquid cryptocurrency
17 assets the debtors still estimate that they are going to have
18 a liquidity shortfall of almost \$700,000 by March 5th. Is
19 that correct?

20 A I believe that is correct.

21 Q And this forecast is based on estimated operating
22 professional -- operating costs and professional fee costs,
23 right?

24 A Yes.

25 Q And those operational costs and professional fee costs

1 they could be greater than the estimates reflected in this
2 thirteen week forecast, correct?

3 A Correct, yeah.

4 Q And all of that has to be paid in full to confirm a
5 plan, correct? And when I say that -- let me withdraw that
6 question and ask it a different way.

7 A Okay.

8 Q All of the post-petition accrued professional fee
9 payments or accrued professional fee costs and post-petition
10 operating accrued payables all that has to be paid to confirm
11 a plan, correct?

12 A Yes.

13 Q So by March 5th it's possible that the debtor's net
14 liquidity shortfall far exceeds what is estimated in this
15 forecast, right?

16 A That's possible. Now since you requested the one that I
17 was referring to we made some additional adjustments on that
18 one. So when you see it, it's actually -- that negative
19 number that you have here, the negative 699, on the latest
20 one that we have is 450.

21 Q I want to correct the testimony. This isn't my number.
22 This is your number, correct?

23 A Sure. Yeah.

24 Q This is the debtor's exhibit, correct?

25 A Right. We --

1 Q And the debtor's financial advisors --

2 THE COURT: Hold on. Let's not talk over each
3 other.

4 Mr. Pierce, let's not talk over the witness
5 please.

6 Do you want to finish your response?

7 THE WITNESS: Yes. Thank you, Your Honor.

8 As I was saying, we try to update it -- I mean we
9 update it once a week officially, but we work on it daily and
10 especially recently with the significant increase in Bitcoin
11 we see substantial increase in valuation. So, that number
12 and a few other adjustments that we've made have reversed
13 that negative 699 number that you referenced to a positive
14 450. So it's about a million dollars better right now.

15 BY MR. PIERCE:

16 Q I just want to clarify, this is the debtor's document,
17 correct?

18 A Sure.

19 Q And this --

20 A It's a moving part.

21 Q -- \$699,585 liquidity shortfall in week five was put
22 together by the debtors, correct?

23 A In week thirteen you mean?

24 Q Yes.

25 A You said week five.

1 Q Excuse me.

2 A You said week five.

3 Q Sorry. Let me withdraw that question and ask it again.

4 A Okay.

5 Q In this exhibit the debtor's calculated that they will
6 have a net liquidity shortfall of \$699,585 in week thirteen,
7 correct?

8 A Yes. That is correct.

9 MR. PIERCE: No further questions, Your Honor.

10 THE COURT: Thank you.

11 I see Mr. Silver has his hand up. Mr. Silver?

12 MR. SILVER: Yes, Your Honor. David Silver of
13 Silver Miller. I represent several of the individual
14 investors including Jaime Shiller. We were the counsel who
15 did the motion to compel about a week and a half, two weeks
16 ago.

17 THE COURT: Okay.

18 MR. SILVER: I have very few questions for Mr.
19 Bonjour.

20 THE COURT: Are you a party to any of the
21 currently pending motions before me?

22 MR. SILVER: Yes. We filed a partial joinder in
23 the motion.

24 THE COURT: Which one?

25 MR. SILVER: The motion to appoint the trustee

1 with Mr. Saracheck.

2 THE COURT: All right. Go ahead.

3 CROSS EXAMINATION

4 BY MR. SILVER:

5 Q Mr. Bonjour, I just want to make sure I understood.

6 You testified you did an analysis into Cred's financials,
7 correct?

8 A Yes.

9 Q And you spoke with and the debtor provided you all the
10 documents you requested, is that correct?

11 A Yes and no. So the challenge is that the debtor has
12 not properly reconciled their books throughout the year. So,
13 what we had to work with is the terminal value on the balance
14 sheet. So we took, you know, current bank statements. We
15 logged in, we looked at what they had. And then we, of
16 course, took their expenses, we looked at that and we used
17 that to put this together.

18 Q Do you know what a transactional ID as it relates to
19 cryptocurrency is?

20 A You're referring to the hash?

21 Q Yes.

22 A Yes.

23 Q Okay. Were you provided the transactional ID's or hash
24 for the transactions in 2019 and 2020 for the debtor?

25 A There -- I have seen some spreadsheets that contained

1 data. I don't know if it extends to 2019. I have seen 2020.

2 Q Did that data come from the data or did that data come
3 from information that was provided for the motion to compel
4 that was filed in this case?

5 A Well the spreadsheets that I have seen are from the
6 company.

7 Q Okay. Have you been provided or have you looked into -
8 - has your company, as part of its analysis for Cred's
9 financial condition which you predicate your projections on,
10 done a -- have you done an investigation into where the
11 cryptocurrencies that relate to the transactional ID's for
12 Cred currently sit?

13 MR. EVANS: Joe Evans for the committee.

14 Objection; outside the scope.

15 THE COURT: Overruled.

16 THE WITNESS: So, you know, we are not doing any
17 forensic analysis. That is not our role. Our role was as an
18 advisor. Also, part of the challenges in their
19 reconciliation they, essentially, downloaded their
20 transactions into sub ledgers which are also not reconciled
21 through 2020 and that is what the debtor is working on as we
22 speak.

23 BY MR. SILVER:

24 Q Well are you aware of any private wallets or any
25 wallets that are related to Cred that hold in excess of 5,000

1 Bitcoin with the present value over \$110 million?

2 A No.

3 MR. EVANS: Objection, Your Honor. Joe Evans from
4 the committee. It assumes facts not in evidence.

5 THE COURT: Overruled.

6 THE WITNESS: No.

7 BY MR. SILVER:

8 Q When you questioned the employees to determine Cred's
9 financial condition did you ask the individual employees
10 about wallets that were associated with Cred?

11 A Yes. We asked them to deliver to us any and all
12 information related to any current holdings of
13 cryptocurrency, whether liquid or non-liquid.

14 Q But to date there has been no transactional analysis
15 done related to the transactional ID's that were provided by
16 the creditor to -- I'm sorry, provided by the debtor to you
17 to reconcile that with the actual investment of my clients
18 who invested 3,500 Bitcoin or the present value of \$77
19 million?

20 A Correct.

21 MR. SILVER: Thank you. That is all I have.

22 THE COURT: Thank you.

23 Mr. Grogan, redirect?

24 MR. GROGAN: Thank you, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. GROGAN:

2 Q So, I want to take you back to Exhibit 38. Can we pull
3 that back up?

4 Mr. Bonjour, I just want to make sure the record is
5 clear. Your testimony is that in terms of the current
6 cash-flow forecast you show a positive ending balance at the
7 end of the thirteen weeks?

8 A Yes.

9 Q And that's based upon an updated version of this cash-
10 flow forecast?

11 MR. EVANS: Objection.

12 THE COURT: Basis?

13 MR. EVANS: Your Honor, the basis is that they are
14 questioning him on Exhibit 38 and asking about a document
15 that he referred to that has not yet been produced or is in
16 evidence about an updated cash-flow that he is referring to.

17 THE COURT: Well he already testified to it when
18 you were cross-examining him. So, overruled. I mean he
19 testified to the fact that the forecast has been updated and
20 that there is now a positive cash-flow balance at the end of
21 the thirteen weeks. He already testified to that.

22 BY MR. GROGAN:

23 Q Mr. Bonjour, you can answer the question.

24 A To clarify at the end of the thirteen week the ending
25 cash is -- the cash-flow is 92,000 and the ending cash is

1 192,000 on the thirteen week.

2 Q Okay. Thank you.

3 Mr. Bonjour, would you expect that a Chapter 11 Trustee
4 would hire professionals?

5 A Yes.

6 Q And so if you were doing a thirteen week cash-flow for
7 a Chapter 11 Trustee there would be a line item here for
8 professional fees?

9 A Yes. Correct.

10 Q Also in terms of the cash-flow forecast here have you
11 taken into account a sale of the business at any point during
12 this thirteen weeks?

13 A No.

14 Q And if the business were sold what impact would that
15 have on the thirteen week cash-flow?

16 A That would provide a tremendous amount of liquidity.

17 Q Would it have any effect on the operating costs?

18 A If you sold it, no. I mean you would not increase your
19 operating costs if you sold it. It would just be --

20 Q Would you --

21 A You would decrease, correct, because you're,
22 essentially -- with that sale you are transferring over,
23 fifteen to eighteen employees that currently operate that
24 platform. So you would decrease your operating.

25 Q Thank you.

1 A It would almost practically go away.

2 MR. GROGAN: Understood. Thank you, Mr. Bonjour.

3 No further questions.

4 THE COURT: Thank you.

5 Mr. Bonjour, you are excused. Thank you.

6 THE WITNESS: Okay. Thank you.

7 (Witness excused)

8 THE COURT: Next witness, Mr. Grogan.

9 MR. GROGAN: Thank you, Your Honor.

10 The next witness we call is Matthew Foster.

11 THE COURT: Mr. Foster, are you on Zoom?

12 MR. FOSTER: I am. Can you hear me?

13 THE COURT: I can. Thank you.

14 Can you raise your right hand? State your full
15 name for the record and spell your last.

16 MR. FOSTER: Matthew Foster, F-O-S-T-E-R.

17 MATTHEW FOSTER, DEBTOR WITNESS, SWORN

18 THE COURT: Mr. Grogan, go ahead.

19 MR. GROGAN: Thank you, Your Honor. Your Honor,
20 initially I would like to move to introduce Mr. Foster's
21 declaration into evidence which was filed at Docket No. 109-
22 2.

23 THE COURT: Any objection?

24 (No verbal response)

25 THE COURT: Its admitted without objection.

1 (Declaration of Matthew Foster, received into evidence)

2 DIRECT EXAMINATION

3 BY MR. GROGAN:

4 Q Mr. Foster, can you introduce yourself to the court and
5 give the court a little description of your background?

6 A Sure. I am -- this is Matthew Foster. I am a managing
7 director and co-founder of Sonoran Capital Advisors, a
8 distressed advisory group. Most recently I spend most of my
9 time as a chief restructuring officer for various debtors.
10 This is my fifth appointment as a chief restructuring officer
11 in the last two or three years, most of which end up in some
12 sort of 363 sale and a liquidating plan. The following
13 pattern, basically, has been outlined for this debtor.

14 Before getting into restructuring, which I have done
15 since 2009, I worked for a private equity on Citizens Bank
16 which has some distressed investments. That is where I kind
17 of cut my teeth in the distressed world. I really got into
18 the Chapter 11 aspects starting in 2009 and, as I mentioned
19 before, formed my own firm in 2017 with a partner.

20 Q And when did you get involved with Cred?

21 A I was hired on November 30th.

22 Q So in your -- so about two weeks ago, right? What did
23 --

24 A A little bit more than two weeks.

25 Q What have you done in the last two weeks to get up to

1 speed?

2 A Well we rely heavily on what MACCO has done. They have
3 been phenomenal in getting us up to speed on everything that
4 is going on. Most importantly, as CRO, when you get in these
5 situations particularly there are some accusations going back
6 and forth is really gain control over the assets of the
7 company, particularly bank accounts, those sorts of things,
8 and making sure that we can show to all of the constituencies
9 that there is an independent party that's been trusted by
10 courts before that knows what he's doing and could oversee
11 what is going on.

12 Q And are you running Cred at this point?

13 A For all intents and purposes, yes. There is no CEO
14 anymore. The CFO, the new CFO, obviously, reports to me and
15 overseeing this whole process, obviously, under the direction
16 of Mr. Lyon.

17 Q Do you answer to anybody other than Mr. Lyon?

18 A No.

19 Q Are you familiar with the debtor's efforts to sell
20 their business?

21 A Yes.

22 Q And what involvement have you had in that process?

23 A Well, obviously, we get updates from Mr. Wu and other
24 individuals at Teneo. So, they report back to me on a
25 frequent basis and ask for insight as to my recommendations,

1 or thoughts, or any sort of proposals that I would eventually
2 make to Mr. Lyon as is typical. And in this process I work
3 with investment bankers all the time. They report to me and
4 we work to maximize the sale value so we can return as much
5 as we possibly can to the creditors.

6 Q And have you seen any term sheets yet?

7 A I have.

8 Q And so at this point you are reviewing term sheets and
9 working through that effort?

10 A Yes.

11 Q Are you familiar with the plan support agreement
12 between the debtors and the committee?

13 A I am.

14 Q And what is your understanding of the plan support
15 agreement?

16 A Well one of the important pieces that Mr. Lyon
17 mentioned yesterday is we understand our fiduciary duty here.
18 I understand that the unsecured creditors are out of the
19 money and that they have a committee that has been formed and
20 we're going to take their advice and thoughts very, very
21 seriously because we understand their responsibilities and
22 understand our responsibilities. So, we wanted to work in
23 lock step with the committee to get to an outcome that
24 benefits their constituents as well as, obviously, the entire
25 estate. And the plan support agreement is the best way to do

1 that.

2 Q And if we're allowed to proceed with that plan support
3 agreement what kind of a plan do you anticipate proposing for
4 the debtors?

5 A You mean as a plan in general or as in like a plan of
6 liquidation from a Chapter 11 plan prospective?

7 Q Yeah, the latter. What kind of a Chapter 11 plan are
8 you going to propose?

9 A It would be a plan of liquidation or liquidating trust
10 to be appointed. A liquidating trustee would be appointed.
11 This is, again, very -- most of the cases that I have worked
12 in ended up in the same way where we do a 363 sale, do it as
13 a going concern because that is the best way to maximize the
14 value and then if there are particularly where there are
15 causes of action like this case where they should be pursued
16 and we want to make sure that we preserve those rights from
17 the trustee. So we will do everything we can to make sure
18 that gets handed over to whoever the trustee is.

19 Q And are you going to have any say over who that trustee
20 is?

21 A I don't believe so, no.

22 Q Who is going to make that decision?

23 A Typically it's the committee that makes the
24 recommendation. I think sometimes the debtors have some
25 recommendations, but typically it's the committee that

1 chooses that.

2 Q And that is the case in this plan support agreement?

3 A Yes.

4 Q Are you aware of any current discussions between the
5 debtors and insiders of the debtor to give those insiders a
6 release?

7 A No.

8 Q Will you give anybody a release?

9 A No.

10 MR. GROGAN: Your Honor, no further questions for
11 this witness.

12 THE COURT: Thank you.

13 Mr. McMahon?

14 MR. MCMAHON: Very briefly, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MCMAHON:

17 Q Mr. Foster, you testified that you managed to get up to
18 speed in a couple of weeks, correct?

19 A It's like drinking from a firehose. Yes, we're getting
20 there.

21 Q And the committee was able to be appointed and get up
22 to speed as well?

23 A Yes. We're helping them along as well.

24 Q And you have heard -- you know Mr. Lyon, correct?

25 A Correct.

1 Q And you know he's previously served as the Chapter 11
2 Trustee, correct?

3 A Yes.

4 Q And you are confident that, you know, Mr. Lyon is a guy
5 who can get up to speed in a situation like this pretty
6 quickly, correct?

7 A Yes.

8 Q So its -- the power to get up to speed, you know,
9 doesn't leave Mr. Lyon regardless of whether he is serving as
10 Chapter 11 Trustee or not, correct?

11 A I am not sure I understand the question.

12 Q Sure. I mean Mr. Lyon is capable of getting up to
13 speed whether he's got his Chapter 11 Trustee hat or not,
14 correct?

15 A Yes. It depends on the individual for sure.

16 MR. MCMAHON: Great. Thank you, Your Honor. I
17 have no further questions.

18 THE COURT: Thank you.

19 Mr. Sarachek?

20 MR. SARACHEK: I have no questions, Your Honor.

21 THE COURT: Okay. Mr. Pierce?

22 MR. PIERCE: Just a few questions, Your Honor.

23 Thank you.

24 CROSS EXAMINATION

25 BY MR. PIERCE:

1 Q Good morning, Mr. Foster. How are you?

2 A Good. How are you?

3 Q Good. You testified that this is a going concern sale,
4 correct?

5 A Correct.

6 Q But this isn't really a going concern sale, is it?

7 A I would argue that it is. The reason I say that is I
8 actually -- the last case that I did in Delaware where I was
9 CRO for a drug company that had a failed cancer drug, it
10 didn't pass FDA approval, we sold the IP assets at three or
11 four times what the stalking horse bid was and there was
12 still a few employees with that company that the buyer took
13 with them.

14 So, I think it depends on your definition of going
15 concern. So you may want to specific that, but that is based
16 on my opinion; their employees are a going concern from my
17 perspective.

18 Q Well let me just clarify because Mr. Wu testified
19 earlier that the debtors are selling a platform. Is that all
20 they're selling?

21 A He also mentioned that there are employees that the
22 buyers are interested in.

23 Q Do the debtors have any current operations today?

24 A Well we have employees that are doing work on a day to
25 day basis including engineers, accountants. So from that

1 perspective, yes. It was mentioned earlier we're not out
2 making loans like the company previously was. So, again, it
3 depends on your definition of operations.

4 Q You can't sell people, can you?

5 A Not exactly sure what you mean by that.

6 Q Well the company doesn't have any operations, correct?

7 A Again it would depend on your definition of operations.
8 I'm not trying to be difficult. I'm trying to get where you
9 want me to go.

10 Q So let me try to be more clear.

11 A Okay.

12 Q Is the debtor currently engaged in any lending
13 activity?

14 A No.

15 Q Are the debtors currently operating the Cred earn
16 program?

17 A No.

18 Q Are the debtors currently operating their Cred borrow
19 program?

20 A No.

21 MR. PIERCE: No further questions, Your Honor.

22 THE COURT: Okay. Mr. Silver, do you have any
23 questions?

24 (No verbal response)

25 THE COURT: We lost Mr. Silver.

1 Mr. Grogan, back to you.

2 MR. GROGAN: Thank you, Your Honor. I have a
3 short redirect. After my redirect, if Your Honor will permit
4 us, Mr. Cousins got disconnected briefly, but he had a couple
5 of follow-up questions for this particular witness and with
6 your permission I'd like to give him an opportunity to ask
7 those.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. GROGAN:

11 Q Mr. Foster, when your -- in your role as a CRO is it
12 important to you to preserve jobs?

13 A Yeah. I mean there's two reasons for that. One is,
14 obviously, employees are part of the constituency and that is
15 why I got into this line of work because I want to save jobs.
16 The second is companies are more valuable with the employees.
17 People have value. Their intelligence. They add value to a
18 process.

19 So, it is my experience that selling a company as a
20 going concern with employees is the best way to maximize
21 value in these circumstances.

22 Q Also, you heard the United States Trustee ask you a
23 couple of questions about getting up to speed. Was MACCO an
24 important component of getting up to speed?

25 A Absolutely. I couldn't have gotten this much

1 information this quickly without them.

2 Q And was Paul Hastings important to you in terms of
3 getting up to speed?

4 A Absolutely.

5 MR. GROGAN: Your Honor, at this point I would
6 like to turn the witness over to Mr. Cousins for a brief Q&A.

7 THE COURT: All right. Well, Mr. Cousins is also
8 debtor's counsel. So I am not sure of the propriety of
9 having two of the -- two lawyers on the same side asking
10 questions. I am going to have to re-open it again for cross
11 examination. So, I will allow it, but it's unusual.

12 Go ahead, Mr. Cousins.

13 MR. COUSINS: Thank you, Your Honor. Just with
14 respect to (indiscernible) there was an exhibit.

15 REDIRECT EXAMINATION

16 BY MR. COUSINS:

17 Q Mr. Foster, do you recall Exhibit 13 from Mr. McMahon
18 yesterday? (Indiscernible) testimony.

19 THE COURT: Mr. Cousins, you're very --

20 THE WITNESS: I --

21 THE COURT: Hold on, Mr. Foster.

22 MR. COUSINS: I'll pick-up, Your Honor.

23 THE COURT: That's better. Thank you.

24 MR. COUSINS: I'm so sorry.

25 THE COURT: Mr. Foster heard it, but I couldn't

1 hear the question.

2 MR. COUSINS: Let me restate it.

3 BY MR. COUSINS:

4 Q Mr. Foster, do you recall the exhibits that Mr.
5 McMahon, Exhibit 13, showed Mr. Inamullah during his direct
6 testimony regarding the relationship with Uphold. Do you
7 recall that?

8 A I remember there -- is that the one that was a letter
9 of release from Uphold talking about Cred and individuals
10 there? Is that the one you are referring to?

11 Q Right. It referenced their plan to sue Cred. Do you
12 recall that now?

13 A Yeah.

14 Q Can you just briefly explain what is the relationship
15 between Cred and Uphold?

16 A So there are a couple things. One, Uphold had on their
17 platform the ability for their customers. This is based on
18 my understanding of what I have been told. I haven't gone
19 through and clicked the buttons myself. Uphold had the
20 ability of their customers today we're going to go and
21 participate in this Cred program. So they could click a
22 button, much like Mr. Inamullah said yesterday, saying we're
23 going to participate in this CD like certificate of deposit
24 like program. So, those customers could say I'm going to use
25 Cred and those cryptocurrencies will get transferred to Cred

1 and go through the programs that have been mentioned before.
2 The other thing is that Uphold is holding assets of the
3 debtors. So, there are various cryptocurrencies that are at
4 Uphold right now.

5 Q And Uphold hasn't sued Cred to your knowledge, is that
6 correct?

7 A That is correct.

8 Q And what is the relationship now? How would you
9 describe the relationship with respect to the tokens that are
10 owed back and forth between Cred and Uphold?

11 A It's actually very cordial. I have interacted with
12 their general counsel along with Mr. Cousins, you, and as
13 well as their outside counsel. I think its BakerHostetler is
14 the name of the firm. So we are currently in the process of
15 working on a stipulation for them to transfer those assets to
16 the debtor.

17 MR. COUSINS: Thank you very much. Your Honor,
18 thank you for -- I know that was unusual and I'm sorry I got
19 disconnected just immediately prior to the end of his direct.

20 THE COURT: Thank you, Mr. Cousins.

21 Let me go back then down the cross list. Mr.
22 McMahon, does that generate any new questions for you?

23 MR. MCMAHON: It does not, Your Honor.

24 THE COURT: Mr. Sarachek?

25 MR. SARACHEK: No, Your Honor.

1 THE COURT: Mr. Pierce?

2 MR. PIERCE: No, Your Honor.

3 THE COURT: And I will ask Mr. Silver again.

4 MR. SILVER: No, Your Honor. I'm good. I
5 apologize for being on mute before.

6 THE COURT: All right. Then Mr. Foster, you are
7 excused.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 THE COURT: Any other witnesses?

11 MR. GROGAN: Your Honor, that is the end of the
12 debtor's testimonial presentation.

13 THE COURT: All right. So where are we? Are we
14 going into closing or does anybody else have any other
15 evidence they intend to introduce?

16 (No verbal response)

17 THE COURT: No takers on the evidence. So I guess
18 we're going to closings. We're already at 11:20. How long
19 do the parties thing they will need for closings? Mr.
20 Grogan?

21 MR. GROGAN: Your Honor, I probably need ten
22 minutes.

23 THE COURT: All right. Mr. McMahon?

24 MR. MCMAHON: About the same, Your Honor.

25 THE COURT: Okay. Mr. Pierce?

1 MR. PIERCE: About the same, Your Honor.

2 THE COURT: Mr. Sarachek?

3 MR. SARACHEK: I will be briefer than that.

4 THE COURT: All right. Mr. Silver?

5 MR. SILVER: I am with Mr. Sarachek. I will be
6 briefer than that.

7 THE COURT: All right. So maybe we can get done,
8 but I do need to take a very short break because we've been
9 going for a while now. So let's take a five minute recess.
10 We will reconvene at 11:25.

11 MR. EVANS: Your Honor, Joe Evans for the
12 committee. We intend to argue as well.

13 THE COURT: All right. How long do you need?

14 MR. EVANS: The same as everyone else, about ten
15 minutes or less.

16 THE COURT: All right. So, we're -- all right.
17 We will see if we can get it done. We will reconvene at
18 11:25.

19 (Resume taken at 11:20 a.m.)

20 (Proceedings resumed at 11:25 a.m.)

21 THE COURT: We'll start with the movants. Mr.
22 McMahon.

23 MR. MCMAHON: Your Honor, good morning. Joseph
24 McMahon for the United States Trustee.

25 At his deposition this past Monday Dan Schatt

1 testified regarding his appointment of Grant Lyon to Cred's
2 board in November of 2020 after Lu Hua resigned as the
3 director of Cred Inc. He indicated that it was important to
4 have a so-called "independent" director on the board. And I
5 asked him, independent from what? His answer was,
6 "Independent from any connection between Cred and MoCredit"
7 was his response.

8 The United States Trustee respectfully submits
9 that the record establishes that there is a basis for
10 appointing either a Chapter 11 Trustee and examiner or a
11 Chapter 7 Trustee in these cases.

12 First, the Chapter 11 Trustee. Section 1104(a)
13 provides two basis for appointment of a Chapter 11 Trustee.
14 First, for cause under Section 1104(a)(1). Second, if it's
15 in the interest of creditors any equity security holders or
16 other interests of the estate under Section 1104(a)(2).

17 In In Re Marvel Entertainment Group, case citation
18 140 F.3d 463, the United States Court of Appeals for the
19 Third Circuit observed that the presumption against
20 appointing a trustees is tied to two things. First,
21 management, which brought the debtor to bankruptcy, must be
22 honest, experienced and familiar with the business. Second,
23 there has to be a reorganization; otherwise, we don't need
24 management's operational investment.

25 I want to quote from the Third Circuit's opinion

1 with respect to this point so that the record is clear. In
2 the usual Chapter 11 proceeding the debtor remains in
3 possession throughout reorganization because, and this is an
4 internal quote,

5 "Current management is generally best suited to
6 orchestrate the process of rehabilitation for the benefit of
7 creditors and other interests of the estate."

8 Thus, the basis for the strong presumption against
9 appointing an outside trustee is that there is often no need
10 for one. Quote again,

11 "The debtor-in-possession is a fiduciary of the
12 creditors and as a result has an obligation to refrain from
13 acting in a manner which could damage the estate or hinder a
14 successful reorganization."

15 The strong presumption also finds its basis in the
16 debtor-in-possession's usual familiarity with the business it
17 already had been managing at the time of the bankruptcy
18 filing often making it the best party to conduct operations
19 during the reorganization.

20 In short, the Third Circuit tells us that if unfit
21 prepetition management when faced with a bankruptcy filing or
22 a trustee motion in a bankruptcy case engages in a game of
23 musical chairs and appoints shiny new current management that
24 doesn't eviscerate or forward a trustee motion. Rather, it
25 removes the presumption that the debtor-in-possession should

1 remain in control. What the statutory language is
2 descriptive of is the code's expectation that longstanding
3 competent and honest prepetition management is the only
4 management who gets the benefit of operating during a
5 reorganization.

6 THE COURT: Mr. McMahon, let me ask you a
7 question.

8 MR. MCMAHON: Sure.

9 THE COURT: Is there any evidence that's been
10 presented to me that Mr. Lyon and the other individuals who
11 have been retained by Mr. Lyon to assist him in this case are
12 anything other than independent of Cred or MoCredit?

13 MR. MCMAHON: Well we would argue, Your Honor,
14 that the answer is they're not independent of Mr. Schatt and
15 Mr. Hua. I can explain.

16 THE COURT: Is that going to be because they are
17 still the equity owners and could remove them if they choose
18 to do so?

19 MR. MCMAHON: Correct. And also the factual
20 record is clear as to how the current corporate structure
21 came about meaning, you know, debtor's counsel contacted Mr.
22 Lyon who then contacted Mr. Schatt. Mr. Lyon was put into a
23 position of authority.

24 THE COURT: I understand that, but that, in and of
25 itself, doesn't indicate that he's not independent. I mean

1 there is no evidence that I have seen to indicate that Mr.
2 Lyon is not anything other than completely independent of the
3 debtors or anybody connected to the debtors.

4 MR. MCMAHON: And, Your Honor, that -- the facts
5 are what they in so far as the record has been established.

6 THE COURT: So my question then becomes if Mr.
7 Lyon is independent of the debtors and anybody connected to
8 the debtors, including the insiders of the company, what
9 would a Chapter 11 Trustee bring to the table that Mr. Lyon's
10 doesn't?

11 MR. MCMAHON: Your Honor, again, I think we have
12 to -- its -- I think we have to -- again, the record
13 establishes that Mr. Lyon was put into place by Mr. Schatt.
14 He is subject to being removed by a vote of Mr. Hua and Mr.
15 Schatt. The debtors -- they are the two equity shareholders
16 who are both targets of estate claims and causes of action
17 based upon the record of this motion.

18 THE COURT: Well what if I was to include in --
19 what if I was to include in an order that Mr. Lyon cannot be
20 removed by either of the equity holders without an order of
21 this court?

22 MR. MCMAHON: Well I think the issue is under 1104
23 the court is actually obligated with the word "shall" to
24 appoint a trustee in two circumstances where there is, you
25 know, under (a)(1) where there is cause for doing so by

1 current management. Then second under the (b) section where
2 it's in the interest of the estates and creditors to do so.

3 Your Honor, the record yesterday with respect to
4 the prepetition activities associated with the debtor's
5 estates. The fact that Mr. Schatt and Mr. Hua are in
6 connection with the MoCredit related issues. I mean I can
7 get right into the, I guess, discussion of the prepetition
8 activities.

9 THE COURT: There is no doubt in my mind that
10 there was shenanigans going on prepetition, that there was
11 mismanagement of the debtors, but we don't have a situation
12 where those people who are managing the company at that time
13 are still in charge. The only issue is can Mr. Schatt or Mr.
14 Hua remove Mr. Lyon as the independent director. And I am
15 saying why can't I enter an order that simply says they can't
16 do that without my permission --

17 MR. MCMAHON: Because --

18 THE COURT: -- instead of bringing in a whole
19 other Chapter 11 Trustee who is going to have to start all
20 over again.

21 MR. MCMAHON: Well there is a couple of points to
22 be made there, Your Honor.

23 First, Section 1104(a) the language is mandatory.
24 It just says "shall" meaning that --

25 THE COURT: If I find cause, but I don't know that

1 there is cause at this point because we have new management
2 and nobody has shown me that there is any mismanagement going
3 on post-petition.

4 MR. MCMAHON: Again, Your Honor, you have in
5 addition to Section 1104(a)(1) and we would, I guess, contest
6 the suggestion that this current management, whatever the
7 professionals that have been inserted by Mr. Schatt and Mr.
8 Hua, are independent of them. But beyond that under
9 1104(a)(2), you know, there is also grounds where it's in the
10 best interest of creditors meaning it's fairly clear that the
11 situation is such where the circumstances would warrant the
12 appointment of a trustee.

13 So, there is two basis there under Section 1104
14 and the mere fact that, you know, the professionals would
15 believe that, you know, they can sell the assets or whatever.
16 What the Chapter 11 Trustee in response to Your Honor's
17 question is going to do is going to add the independence
18 factor completely removed from the situation that, you know,
19 Mr. Lyon and the other professionals just do not have. And
20 it's the only code based solution to a situation like the
21 factual patterns that the court has been presented with.

22 THE COURT: Well, again, I don't think there is
23 any evidence that Mr. Lyon and the other professionals are
24 beholden to any of the insiders of this company. So the
25 question is then you would go to 1104(a)(2) which is

1 discretionary if it's in the best interest of the creditors
2 and how could it be in the best interest of the creditors if
3 the only thing we're going to do is remove somebody who is
4 currently independent of the owners of the company and the
5 insiders of the company, and replace them with someone else
6 who is also independent of the insiders and who would have to
7 start over and delay the process.

8 MR. MCMAHON: Your Honor, first, we are like just
9 a mere matter of days into these bankruptcy cases. So,
10 therefore, I don't know if there is going to be like a real -
11 - I don't believe there is going to be real delay to the
12 process. Our office can interview candidates and insert one
13 quickly in order to address the concern.

14 Beyond that, you know, with respect to the going
15 forward, Your Honor, in light of the testimony you heard with
16 respect to the prepetition shenanigans we're talking about
17 claims and causes of action. And their claims and causes of
18 action where Mr. Schatt and Mr. Hua are going to be targets
19 with respect to them. And with respect to this process, Your
20 Honor, again, the record is clear that Mr. Lyon was placed
21 there by the insiders who would be the subject of those
22 claims and causes of action in addition to their affiliated
23 companies.

24 So, if there is anything that would be wrong in
25 light of this record, Your Honor, it will be leaving Mr. Lyon

1 in as director and, frankly, it would be rudderless. The
2 court under the bankruptcy code has a clear directive in
3 circumstances like this where the insiders, basically, have
4 conducted themselves in a way such that in order to ensure
5 protection of the creditors the court has to step in and
6 appoint a trustee.

7 So, it's basically from a standpoint of the way
8 the code works Mr. Schatt and Mr. Hua put Mr. Lyon there.
9 That is a positional conflict that in light of the record
10 that was developed yesterday requires someone completely
11 independent and removed from the process in order to move it
12 forward.

13 Your Honor, we've heard some testimony about the
14 sale process to a degree. Your Honor has also heard about,
15 you know, I guess, some large numbers regarding claims and
16 causes of action the \$40 million line of credit for MoCredit
17 which is outstanding. So in terms of the value in the case
18 it certainly looks like in the longer term the claims and
19 causes of action case that needs someone independent,
20 completely independent, from Mr. Schatt and Mr. Hua in order
21 to move it forward. That is what is required by the record
22 that was developed yesterday.

23 THE COURT: All right. Thank you, Mr. McMahon.

24 I'm going to move onto Mr. Saracheck.

25 MR. SARACHEK: Your Honor, I am going to try to

1 address what you're getting at. I do think that the
2 professionals in the case have the best intentions, but if
3 you're not going to -- and I echo Mr. McMahon's argument, but
4 if you're not going to appoint a trustee in a case where
5 after March of 2020 investor money was taken in a Ponzi like
6 manner to pay the expenses of the company, if you're not
7 going to appoint a trustee in a situation like this I'm not
8 sure that there is any situation where a trustee can't be
9 subverted by professionals.

10 What happened here, just too really address this
11 at its core, is that Mr. Schatt was the brains of this
12 operation and he only resigned because of the pressure that
13 Mr. McMahon and my motion put on him. And he only resigned
14 post-petition on December 7th and Mr. Podulka as well. Quite
15 frankly, it's wrong that -- and that was post-petition. It's
16 wrong for professionals to be able to subvert what Congress
17 drafted which was a provision in the bankruptcy code that
18 required the appointment of a Chapter 11 Trustee.

19 I understand the practical implications of all of
20 this, I do. Nevertheless, and in our motion we did move for
21 a Chapter 7 Trustee, but nevertheless the bankruptcy code
22 requires the appointment of a trustee when you have post-
23 petition management and really the person who is calling the
24 shots he's the guy who signed the first day declaration. If
25 you notice even though MACCO did submit a declaration first

1 day it was devoid -- it basically was devoid of any
2 responsibility and any recognition of the inter-workings of
3 the operations.

4 Your Honor, you have --

5 THE COURT: Let me ask you, Mr. Saracheck, I'm
6 going back to the same thing. We now -- Mr. Schatt is now
7 out. We have an independent director who is running the
8 company. We have independent professionals who are engaging
9 in a sale process. It's nothing different than what a
10 Chapter 11 Trustee would do if I were to appoint one. I have
11 no evidence before me that there is any post-petition
12 misconduct by the debtors. I have no evidence before me that
13 Mr. Lyon or any of the professionals that he has retained are
14 anything other than completely independent.

15 So what is the cause that would allow me to
16 appoint a Chapter 11 Trustee? Yes, there was prepetition
17 misconduct, but that's prepetition and that is not relevant
18 at this point because we have new management.

19 MR. SARACHEK: Your Honor, respectfully, you do
20 have evidence that there was post-petition misconduct. The
21 bottom line is with respect to UpgradeYa the 478 Bitcoin that
22 they reported they had in collateral on the petition date is
23 really only 160. And presumably the debtors and its
24 professionals should know what collateral they have.
25 Furthermore --

1 THE COURT: Well there is no evidence that that
2 occurred post-petition. That is just the way it is now. So
3 how did it go from 470 to 164? I don't know. There was no
4 evidence introduced about that.

5 MR. SARACHEK: I believe it's in Mr. Inamullah's -
6 - well, I believe it is -- Mr. Inamullah testified also with
7 respect to the value of the supposed 14 million value that
8 the debtor reported as their collateral, their specific
9 Bitcoin, but that Bitcoin was virtually worthless.

10 THE COURT: Again that all occurred prepetition.

11 MR. SARACHEK: It was information that was filed,
12 you know, in the first day. So that is post-petition. I do
13 think that an independent trustee -- by the way, Your Honor,
14 I want to call the court attentions to the fact that the
15 largest creditors here don't sit on the creditor's committee.
16 Mr. Silver and I represent the largest creditors here. And
17 none of them sit on the creditor's committee.

18 The bottom line is you're hearing from the largest
19 creditors that we would like the appointment of an
20 independent trustee to investigate these causes of action.
21 That is our position.

22 THE COURT: Thank you, Mr. Sarachek.

23 I'm going to move onto Mr. Pierce.

24 MR. PIERCE: Thank you, Your Honor. Matthew
25 Landis with Landis, Rath & Cobb on behalf of UpgradeYa

1 Investments.

2 Your Honor, UpgradeYa joins in the conversion
3 motion on a limited basis to support the conversion from
4 these cases from Chapter 11 to Chapter 7. I acknowledge that
5 converting these cases to Chapter 7 is a difficult decision
6 for this court to make. It's also a very difficult decision
7 for a creditor to support conversion to Chapter 7. Here
8 UpgradeYa along with numerous other creditors have joined in
9 that request.

10 Your Honor, quite simply, there's some cases that
11 do not belong in Chapter 11 and this is one of them. The
12 debtors and the committee assert that to the extent cause to
13 convert existed those issues have been resolved and they
14 resolved those through extraordinary steps to justify keeping
15 these cases in Chapter 11.

16 To name a few of the steps that have been taken,
17 the chief executive officer has been removed, the chief
18 financial officer has been terminated, a chief restructuring
19 officer has been installed, an interim chief financial
20 officer has been appointed, and a professional from one of
21 the proposed advisors to the debtors has been employee of
22 that proposed professional has been installed and is acting
23 as the debtor's controller. All of these steps have taken
24 place after the petition date.

25 I don't think it's questioned that the debtors

1 entered the Chapter 11 with serious management and governance
2 issues. Some of those governance issues and the authority to
3 file these Chapter 11 cases on behalf of at least one of the
4 debtors has not been resolved yet. The solution the debtors
5 have presented and the committee is to strip the company on a
6 post-petition basis to a non-operating shell and install
7 Chapter 11 professionals as employees and officers of the
8 company.

9 I don't say that as a knock on the professionals'
10 qualifications. This is the highlight that Cred is not a
11 debtor-in-possession with a legitimate going concern to
12 operate and sell in a Chapter 11 process.

13 THE COURT: Well the evidence that I have form the
14 witnesses, as Mr. Wu testified, they are in a sale process.
15 They have already got people who are interested in buying the
16 company on a going concern basis and is there any scenario in
17 which the creditors of this company would do better if I were
18 to convert this to a Chapter 7 and we liquidate the pieces
19 rather than selling a going concern.

20 MR. PIERCE: Absolutely, Your Honor. Absolutely.
21 What --

22 THE COURT: You're seriously telling me that in
23 any circumstance a company that is liquidated in a Chapter 7
24 is going to do better than a Chapter 11 being sold as a going
25 concern?

1 MR. PIERCE: Well to be clear I say that because
2 if you look at the proposed thirteen week cash-flow forecast,
3 yes, there will be more assets available at the end of those
4 thirteen weeks if we convert this to a Chapter 7. The
5 debtors, what they propose and the evidence shows, is that by
6 the time we get to March 5th there will be a net liquidity
7 shortfall of \$700,000. That is after and it assumes that the
8 debtors sell all of the cryptocurrency currently in their
9 possession.

10 So what the debtors propose to this court as a go-
11 forward plan here is that they will sell all of their
12 cryptocurrency liquid assets, that they will deplete all cash
13 on hand and that there will still be a liquidity shortfall of
14 nearly \$700,000 and that is based on go-forward estimates
15 that Mr. Bonjour testified and acknowledged could exceed what
16 is in that forecast. That shortfall could be substantially
17 greater.

18 It is also dependent on the price of Bitcoin or
19 their other cryptocurrencies on any given day if the price of
20 that cryptocurrency is --

21 THE COURT: Which is why the debtors want to sell
22 this company as quickly as possible. If I convert this to a
23 seven and have to have a Chapter 7 Trustee appointed you
24 think this company is going to get sold quicker than it would
25 be under the current circumstances?

1 MR. PIERCE: Well, Your Honor, if we look at the
2 Chapter 13 budget the debtors are not proposing to sell any
3 of their cryptocurrency. They are using their cryptocurrency
4 to fund these cases and even doing that they still have a
5 shortfall. They do not reach any scenario in which they can
6 confirm a plan.

7 THE COURT: Well how is a Chapter 7 Trustee going
8 to sell the cryptocurrency if it belongs to other people?

9 MR. PIERCE: Your Honor, that is a situation that
10 would have to be, you know, decided in a different context.
11 Even if we take out -- I think what Mr. Wu did not testify
12 that the debtors are seeking to sell their cryptocurrency
13 they're seeking to sell the platform.

14 THE COURT: Exactly. That is the Chapter 11 sale
15 process to sell the platform with the employees who know how
16 to run it as a going concern as opposed to liquidating it in
17 which case now we're having fights over, well, is it
18 someone's collateral, is it the debtor's Bitcoin, is it
19 somebody else's Bitcoin. And it gets into a morass of how to
20 deal with that situation. That seems more difficult to me
21 than the current process proposed by the debtors.

22 MR. PIERCE: Your Honor, Mr. Wu testified that
23 there is no difference in selling the platform by a Chapter 7
24 Trustee or a Chapter 11. There is not something that a
25 Chapter 7 Trustee can't do. It sounds to me that the process

1 and sale of the assets that they're proposing is intellectual
2 property and there may be employees that go with the debtors
3 for -- that go over to a potential purchaser or not.

4 We don't know, but what we do know is that the
5 cash-flow shows under a scenario in which they sell all their
6 cryptocurrency they can't get to a confirmable plan and they
7 don't get to the liquidating trust or litigation trust that
8 they propose under the plan support agreement. Then we end
9 up in Chapter 7 and we end up in Chapter 7 on March 5th after
10 over \$6.5 million have been paid to professionals.

11 THE COURT: All right. I understand your
12 position. Let me move onto Mr. Silver because we have to
13 finish this up.

14 MR. SILVER: Thank you, Your Honor. I'll be
15 brief.

16 First, it's my client's position that Mr. Schatt
17 is not out of the company. He's still actively involved and
18 he's still being paid \$10,000 dollars a month presumably for
19 something.

20 And we request that he be put out. He is not out.
21 We have worked with debtors' counsel and counsel for the
22 committee. So from our perspective that answers your question
23 as to whether or not there's true independence. We don't
24 believe so, because they kept Mr. Schatt. He's still there
25 and he's being compensated.

1 And as --

2 THE COURT: Well, do you think a Chapter 11
3 trustee wouldn't want to keep on Mr. Schatt because he's the
4 one who knows where all this stuff is buried? I mean he has
5 all the information -- how is a Chapter 11 trustee going to
6 come in, in a vacuum and take this company over. He's going
7 to have to have somebody there who has the history of it.

8 MR. SILVER: So, you're answering my own question
9 I was about to state next.

10 The problem we have with the actual independence,
11 the second part, is there's a \$100 million dollars missing
12 from all these reports and analysis. And Mr. Bonjour made
13 that point. They have not looked into -- and this is not a
14 typical bankruptcy because of the crypto assets. So, there's
15 a hundred million dollars and no one is jumping up and down
16 on the table except for the actual creditors.

17 As Mr. Sarachek pointed out, the largest creditors
18 are not on the committee. The largest creditors of which,
19 again, my clients lost 3500 bitcoin and 12,000 each for a
20 near total value of over \$90 million dollars right now. That
21 money is missing and the people -- and this is, again, the
22 unsecured creditors committee just came in last week. But
23 for the last six weeks when you say don't you need Mr.
24 Schatt? The answer is no.

25 The way this forensic analysis works is very

1 simply the transactional ideas just need to be analyzed and
2 then you simply follow that. This is no different than if
3 there were serial numbers involved. Mr. Schatt has been --
4 alleged that Mr. Schatt is involved in some of this.

5 The insider trading between MoCredit and Cred, I
6 mean our position is that Mr. Schatt still being in the
7 company is and of itself a dispositive disqualification for
8 true independence. And, therefore, we strongly support the
9 trustee's motion to install a trustee because we believe true
10 independence is needed.

11 It needs to be someone who is uniquely qualified
12 to actually discover where the missing cryptocurrency is.
13 That is publicly available information on the block chain.
14 It's what sets apart cryptocurrencies from U.S. dollar fiat
15 and we strongly encourage that be putting in the trustee for
16 that reason.

17 THE COURT: Thank you, Mr. Silver.

18 Let me turn to the debtors. Who's going to do the
19 closing, Mr. Grogan, Mr. Cousins?

20 MR. GROGAN: Yes, Your Honor. James Grogan from
21 Paul Hastings on behalf of the debtors.

22 Your Honor, you've raised some of the points I
23 would have raised, so I think I might be able to be shorter
24 than ten minutes.

25 I think we need to just go back to the

1 (indiscernible) requirements here. So, let's start with the
2 request to convert the case to a Chapter 7.

3 One of the requirements if you're looking at
4 1112(b)(4)(a) is the absence of a reasonable likelihood of
5 rehabilitation. We have a plan support agreement in place
6 for a consensual plan supported by our committee.

7 I would also point out that that plan support
8 agreement immediately grants consent from the debtor to the
9 committee to control causes of action against the insiders
10 which is another reason why Mr. Lyon is independent.

11 THE COURT: Hold on, Mr. Grogan. Hold on, Mr.
12 Grogan, let me ask you a question.

13 So, we have a situation here according to the
14 other creditors that I've heard from that say that the
15 creditors on the creditors committee don't represent the
16 majority of the holders of the bitcoin in this case. And
17 they are all opposed to having Mr. Lyon continue in his
18 position. They want a Chapter 11 trustee.

19 And isn't the, you know, an irreconcilable
20 conflict between the committee or, excuse me, between
21 creditors and the debtors; doesn't that provide a basis for
22 appointing a Chapter 11 trustee?

23 MR. GROGAN: Well, I think that actually was not
24 accurate. Mr. Sarachek's client, I don't even think we're on
25 the top thirty list. I don't know where he's getting that

1 information that they're the largest creditors. They're not.

2 The members of the committee, and the committee
3 can speak up on this as well. But I know that several of
4 them were top ten on the top thirty list, so. I just don't
5 think that's accurate. And there's no evidence to suggest
6 that the committee is not representing the larger creditors.

7 Putting that aside, I mean we do have a path
8 forward for a quick efficient Chapter 11 plan process which
9 is confirmable within a short amount of time. There's also
10 as the court has already noted no evidence of gross
11 mismanagement of the estate. There just isn't.

12 The company is being well managed currently and
13 so, there's just no statutory predicate here for conversion.

14 Second on the Chapter 11 Trustee cause that goes
15 to current management. Again, Mr. Inamullah testified that
16 he left the company November 6th. He has zero evidence of
17 what's going on post-petition. There's no evidence that
18 anybody has done anything wrong since the petition date.

19 We're not here to sprinkle holy water on what the
20 debtors did prepetition. Nobody on my side thinks that this
21 company was well run or, you know, as a model for business
22 schools. But, you know, we are doing the right thing today.
23 We will get this company sold quickly and we will confirm a
24 plan before March.

25 So, there's just no cause here to displace Mr.

1 Lyon and Mr. Foster so that we -- and prevent them from
2 running what will be the most effective successful outcome
3 possible here for all of the unsecured creditors.

4 And with that, I'll turn it over to the committee.

5 THE COURT: Thank you. Let me hear from committee
6 counsel.

7 MR. WALSH: Good morning, Your Honor. Tim Walsh
8 from (indiscernible).

9 THE COURT: Mr. Walsh. I thought I hear Mr.
10 Walsh. I don't --

11 MR. WALSH: That is correct.

12 THE COURT: I'm having a hard time hearing you.
13 Can you get closer to your speaker or?

14 MR. WALSH: How is that, Your Honor?

15 THE COURT: That's better. Thank you.

16 MR. WALSH: So committee in this represents
17 approximately 6500 unsecured creditors, Your Honor. And on
18 the committee, I think we have the third, fourth, sixth and
19 seventh largest holders as creditors.

20 And, Your Honor, you should know that this
21 committee, and we're very lucky to have it, is a highly
22 sophisticated committee. It's comprised of individuals with
23 a deep understanding of cryptocurrency and block chain.
24 Notably, about half of the committee members are law school
25 trained.

1 And this committee has told me they have faith in
2 the independence of both Mr. Lyons and Mr. Foster, so I think
3 the court should be aware of.

4 We believe that it's the committee and not a
5 Chapter 7 trustee or Chapter 11 trustee that's best suited to
6 investigate these claims with the debtor. The committee has
7 (indiscernible) expertise and the financial motivations to do
8 so. And as Your Honor points out installing a new
9 independent person at this stage of the case would only lead
10 to another layer of administration which we don't think is
11 warranted.

12 With respect to the U.S. Trustee's motion, Your
13 Honor, I'm not really sure who they're fighting for. The
14 committee made it pretty clear in its papers, we've executed
15 a PSA. We see a way out of this case. We see a sale process
16 that can be accomplished and we see a plan of liquidation
17 that transfers all these claims to a trust that can be
18 investigated and prosecuted by the committee. That's the way
19 out.

20 The committee does not want a trustee. The
21 committee wants this process to go forward. Again, I'm not
22 sure who the U.S. Trustee is fighting for at this point
23 because my constituents have made it clear, they do not
24 (indiscernible) a trustee. They think it's a waste
25 (indiscernible).

1 THE COURT: Mr. Walsh, you're kind of breaking up
2 a little bit.

3 MR. WALSH: Your Honor, I think you've hit upon
4 the other points with respect to what is in evidence and what
5 is not, so I won't go through that.

6 But just for the record, the committee does not
7 want a trustee appointed in this case and wants to go forward
8 with the PSA.

9 THE COURT: Thank you, Mr. Walsh, I appreciate it.

10 All right, we are at -- Mr. McMahon, very briefly.

11 MR. MCMAHON: Your Honor, I just want to note for
12 the record that we also requested an examiner under 1104(c)
13 provision which is mandatory because (indiscernible) that in
14 this case. So, I just want to note that for the record.

15 THE COURT: All right, understood.

16 Here's what we're going to do. I have another
17 hearing -- I have a meeting and then I have a hearing. My
18 hearing is at one o'clock. I'm hoping it does not take more
19 than an hour. So, I'm going to -- let's reconvene at three
20 o'clock. I'll give you my ruling on these motions that are
21 pending and we'll see how far we can get into the rest of the
22 agenda, and we'll go from there.

23 So, let's -- we'll say we're standing in recess
24 until 3:00 p.m. All right.

25 (A Chorus of "Thank you, Your Honor")

1 THE COURT: Thank you.

2 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

3 (Recess at 12:02 p.m.)

4 (Proceedings resumed at 3:05 p.m.)

5 THE OPERATOR: Recordings have begun and we are
6 now live.

7 THE COURT: Thank you. Good afternoon, everyone.
8 This is Judge Dorsey. We're back on the record in Cred,
9 Inc., Case Number 20-12836.

10 Before we get back into the agenda, I'll go ahead
11 and give you my ruling on the motions to convert the case to
12 Chapter 7, appoint a Chapter 11 Trustee, and/or appoint an
13 examiner.

14 Before converting a case to chapter -- a Chapter
15 11 case to Chapter 7, the Court must first determine whether
16 cause exists to do so under 1112, Subsection (b). "Cause" is
17 defined as including a substantial or continuing loss to or
18 diminution in the estate and the absence of a reasonable
19 likelihood of rehabilitation. See Section 1121(b) (4).

20 The conduct leading to the decision to convert
21 must be post-petition conduct. See In Re Sagecrest II, LLC,
22 2010 WL 537246, at Page 3 (Bankr. D. Conn. 2010).

23 Here, I have no evidence before me that would show
24 the debtors are incurring any substantial or continuing loss,
25 and certainly none that relates to post-petition conduct.

1 Moreover, debtors did not present evidence -- excuse me.
2 Moreover, debtors did present evidence that they have a
3 viable path forward to a potential confirmation of a plan of
4 reorganization that can be accomplished in the very near
5 term. Therefore, the conversion to Chapter 7 is not
6 appropriate, and I will deny that relief.

7 Appointment of a Chapter 11 Trustee is governed by
8 Section 1104 of the Code. 1104(a)(1) allows appointment for
9 cause, including fraud, dishonesty, incompetence, or gross
10 mismanagement of the affairs of the debtor by current
11 management, either before or after commencement of the case.
12 1104(a)(2) provides that appointment can be made, if it's in
13 the best interests of the creditors, equity security holders,
14 or other interests.

15 In this case -- in -- determining the existence of
16 cause is made on a case-by-case basis at the discretion of
17 the Court. See *In Re Sharon Steel*, 871 F.2d 1217, at 1226
18 (3d. Cir. 1989).

19 Courts generally consider the following factors in
20 determining whether to appoint a trustee:

21 One, the trustworthiness of the debtor.

22 Two, the debtor's past and present performance and
23 prospects for the debtor's rehabilitation.

24 Three, confidence or lack thereof of the business
25 community and the creditors in the present management.

1 And four, the benefits derived by the appointment
2 of a trustee, balanced against the costs of that appointment.

3 See In Re Reserves Resorts Spa and Country Club,
4 LLC, Case Number 12-13316, nineteen -- a 2013 decision by
5 Judge Gross.

6 The evidence presented was that -- the evidence
7 presented before me in this case raises serious questions
8 about the conduct of the debtors' affairs pre-petition.
9 However, the debtor has removed the pre-petition management
10 of the company and replaced them with independent
11 professionals, including an independent member of the board
12 and the only board member, Mr. Lyons, having heard -- and
13 appointed Mr. Lyons as the only board member.

14 Having heard the testimony of Mr. Lyons and the
15 other professionals retained to run the debtors and market
16 the company for sale, I am convinced of their independence.
17 Although retained initially by prior management and equity
18 holders, no evidence was established to question that they
19 are, indeed, independent. Moreover, the Official Committee
20 of Unsecured Creditors appointed in these cases have entered
21 into a plan support agreement setting out a valid proposal
22 for moving these cases forward.

23 Certain creditors and the U.S. Trustee, however,
24 still express reservations about allowing these independent
25 professionals to conduct the debtors' affairs, as they move

1 forward with a proposed plan. I disagree with those
2 concerns.

3 However, I want to be perfectly clear that, if the
4 two equity security holders take any actions to either
5 replace Mr. Lyons as the independent director or try to
6 dilute his control of the board by appointing additional
7 members of the board without first seeking permission from
8 the Court, I will immediate appoint a Chapter 11 Trustee.
9 Therefore, for these reasons, I find that it would be
10 inappropriate at this time to appoint a Chapter 11 Trustee.

11 As for the appointment of an examiner, this is a
12 more difficult question. I disagree with the UST's position
13 that the appointment of a -- of an examiner is mandatory.
14 The language of -- the language of 1104(c) provides the Court
15 with some discretion. The Court -- it says that the Court
16 shall appoint an examiner to conduct such an investigation if
17 the -- of the debtor as is appropriate. So the question
18 becomes: Is it appropriate in this case?

19 The creditors' committee has taken the position
20 that they are conducting an investigation, although I will
21 note that they have just been appointed, and any
22 investigation must be in its very early stages of this case.
23 I'm also mindful of the fact that the -- some of the
24 creditors of the company are distrustful of the situation and
25 have concerns about the conduct of the previous management of

1 this company.

2 Therefore, I'm going to agree with Judge Glenn in
3 In Re Residential Capital, LLC, 474 B.R. 112, 119-120
4 (S.D.N.Y. 2012), in which he recognized that, quote:

5 "The only dispute as to whether the creditors'
6 committee should be permitted to conduct an investigation
7 without an examiner being appointment" --

8 The creditors' committee is ably represented in
9 these cases and no party questions the creditors' committee's
10 professionals' ability to competently and expeditiously
11 complete an investigation. Nonetheless, Judge Glenn
12 determined in that case that appointment of an examiner was
13 appropriate, and I will do the same here. I think
14 appointment of an examiner to conduct an investigation of the
15 pre-petition conduct of the debtors is appropriate.

16 And therefore, I will enter an order requiring
17 that that be done. The parties should confer and submit an
18 appropriate form of order.

19 And in the form of order, I want to make clear, I
20 do not want any duplication of effort. Since I'm appointing
21 an examiner to conduct an investigation, there's no need for
22 the creditors' committee to conduct a parallel investigation.
23 So I would not approve any fees associated with the
24 creditors' committee conducting that investigation.

25 Are there any questions?

1 (No verbal response)

2 THE COURT: All right. Let's move on to the rest
3 of the agenda. What's next up, Mr. Cousins?

4 UNIDENTIFIED: Your Honor --

5 MR. COUSINS: Good afternoon, Your Honor --

6 THE COURT: Go ahead, Mr. Cousins.

7 UNIDENTIFIED: Your Honor --

8 THE COURT: I hear "Your Honor." Use the raise
9 your hand, so I can know who's talking. I can't -- I've got
10 a screen full of faces here, I don't know who's talking.
11 Nobody. Okay.

12 Back to you, Mr. Cousins. Go ahead.

13 MR. COUSINS: Thank you, Your Honor. Good
14 afternoon. Scott Cousins on behalf of the debtors.

15 I do have one update I wanted to inform the Court
16 because I know we've taken up a lot of time. We've conferred
17 with UpgradeYa about their motion, which is I think the
18 second-to-last item on the agenda. They have agreed to
19 adjourn their motion, the debtor doesn't object.

20 The next hearing we have is in connection with --
21 excuse me -- the adversary that we filed against James
22 Alexander and Alexander's motion to dismiss the case on
23 January 6th. So, with the Court's permission, the debtors
24 would be comfortable, along with UpgradeYa, to move that
25 motion to January 6th.

1 THE COURT: Remind me what that motion is.

2 MR. COUSINS: That's the motion to reclaim
3 collateral that they believe that is in the possession of the
4 debtors. That's Mr. Pierce's client.

5 THE COURT: Okay. Yes, we can move that to the
6 January 6th hearing.

7 MR. PIERCE: And Your Honor --

8 MR. COUSINS: (Indiscernible)

9 MR. PIERCE: -- I'd just like to confirm what Mr.
10 Cousins was saying on behalf of UpgradeYa. And this is
11 Matthew Pierce with Landis, Rath & Cobb for the record.

12 You know, given the late hour and the time that
13 the Court has spent the last two days and the evidentiary
14 issues that relate to our motion, we do not want to take any
15 more of the Court's time and try to get that heard today just
16 because of the time it will take. So we are agreeable with
17 the debtors to adjourn that.

18 THE COURT: Okay. I appreciate that. Thank you,
19 Mr. Pierce.

20 MR. COUSINS: Your Honor, for ministerial action,
21 I think there may be some members of the debtors'
22 professionals who were waiting around for that motion. I'm
23 not sure if they need to stick around any further, but one or
24 more might drop off with that adjourned.

25 THE COURT: That's fine. Anyone who does not need

1 to remain on the call may certainly drop off.

2 MR. COUSINS: Thank you, Your Honor.

3 There are several now uncontested matters at the
4 beginning of the agenda. We certainly understand why the
5 Court did not enter any proposed orders with respect to the
6 motion to reject the headquarters, the insurance policies
7 motion, the motion to -- the application to retain my firm,
8 the procedures for interim comp, the ordinary course
9 professionals and Donlin.

10 Your Honor, we've been working with the committee
11 and the U.S. Trustee. We have produced blacklines, we've
12 filed them and uploaded appropriate orders. And to my
13 understanding, Your Honor, I don't think there's any
14 objections to any of those, but I can certainly go through
15 the blacklines and the changes that we made in response to
16 the committee and (indiscernible)

17 THE COURT: No, I did review those that are under
18 COC and CNO. I was waiting to see what happened with the
19 motions to dismiss -- or the motion to appoint a trustee or
20 convert. So I will go ahead and enter those orders for you.

21 MR. COUSINS: Thank you very much, Your Honor.

22 And I think that brings us to Agenda Item Number
23 7, which is -- Mr. Bongartz from Paul Hastings is going to
24 handle that.

25 THE COURT: All right. Mr. Bongartz?

1 MR. BONGARTZ: Yes. Good afternoon. This is Alex
2 Bongartz of Paul Hastings.

3 So we're going to continue now with Agenda Item 7.
4 And if it pleases the Court, we would like to consider Agenda
5 Item 7 together with Agenda Item 12, which is the motion to
6 seal, which is essentially covers the same ground that is
7 left over from the motion on Agenda Item 7; i.e., the motion
8 to approve the redaction or withholding of publication of
9 certain personal identification information of the debtors'
10 customers.

11 So we -- if the -- as Your Honor will recall --

12 THE COURT: Hold on one second --

13 MR. BONGARTZ: -- at the first day --

14 THE COURT: -- Mr. Bongartz. Hold on one second.

15 I think someone else has their line open, I'm
16 getting feedback on the phone. If you're other than Mr.
17 Bongartz, please mute your phone. Thank you.

18 Go ahead, Mr. Bongartz.

19 MR. BONGARTZ: Thank you.

20 As Your Honor will recall, you had granted the
21 relief as it relates to the redaction of personal
22 identification information on an interim basis at the first-
23 day hearing, that was at Docket Number 34. And we are now
24 requesting approval of that relief on a final basis.

25 I wanted to note that we had attached to our reply

1 -- which is filed at Docket Number 187 -- a declaration of
2 Chris Wu of Teneo, and we would like to introduce that into
3 evidence in support of the motion and both -- to be clear,
4 both the motion to redact, as well as the motion to seal.
5 And that was my first request, to introduce that into
6 evidence.

7 THE COURT: Is there any objection?

8 MR. SCHANNE: We have a limited objection, Your
9 Honor.

10 THE COURT: Who's speaking? Mr. Schanne?

11 MR. SCHANNE: Schanne.

12 THE COURT: Schanne.

13 MR. SCHANNE: May it please the Court, good
14 afternoon. John Schanne, also on behalf of the Office of the
15 United States Trustee.

16 Just a limited hearsay objection to the second
17 sentence of the sixth paragraph of the Wu declaration. And
18 that is Mr. Wu informing the Court of what potential buyers
19 are informing Mr. Wu. If we want testimony of what the
20 buyers are saying, they need to be here to say it.

21 THE COURT: Mr. Bongartz?

22 MR. BONGARTZ: Well, I think the Court can take
23 notice of the fact that this is what the buyers have told Mr.
24 Wu, whether the buyer --

25 THE COURT: How can I do that? I can't do that,

1 take notice of it. I mean, they've either told him or they
2 haven't. And if he's the one telling me they told him, it's
3 hearsay.

4 MR. GROGAN: Your Honor, James Grogan. May I be
5 heard for just one second on this?

6 THE COURT: Quickly.

7 MR. GROGAN: Your Honor, Mr. Wu, I think, is an
8 expert, he's been our retained as our -- or is proposed to be
9 retained as our investment banker, and an expert can rely on
10 hearsay.

11 THE COURT: Well, he's not testifying as an expert
12 on this motion, so I'm going to sustain the objection.

13 MR. GROGAN: Okay.

14 MR. SCHANNE: Thank you, Your Honor.

15 (Redacted Wu Declaration received in evidence)

16 MR. BONGARTZ: All right. As to the merits of the
17 motion, I think we've laid our arguments out in our reply,
18 but I'm just going to recap them briefly.

19 As Mr. Wu's declaration substantiates, the
20 customer list has value here, but it only has value as long
21 as it's not disclosed. In fact, Mr. Wu's declaration -- as
22 for his declaration, he is attempting to sell the business as
23 a going concern, which includes the customer list. And to
24 release or reveal the names on that list would materially
25 diminish the value of that list.

1 Now he also testified that -- or sorry, he didn't
2 testify. In his declaration, he declared that the -- he is
3 marketing the customer lists. I'm not going to mention what
4 the buyer said in response, but he -- it's definitely part of
5 the assets, the key assets that are being marketed for sale.
6 And in his opinion, the -- if that information were to be
7 disclosed, it would materially diminish its value.

8 I would also note that one of the key features of
9 cryptocurrency -- as is not just evidenced by Mr. Wu's
10 declaration, but it's now been repeated on multiple occasions
11 -- is that the holders of such currency, they are generally
12 anonymous. It's certainly possible that a cryptocurrency
13 holder can raise his hand, as has happened even in this case,
14 and identify himself. But without the customer doing so
15 voluntarily, it is generally not in the public domain who
16 holds cryptocurrency. And to be clear, this is not just
17 limited to individuals; it is also the case for corporate
18 entities. And I believe one evidence is -- in support of
19 that is -- we'll get to that, and the committee has
20 evidentiary support in that regard.

21 So, with that in mind, we would like to reiterate
22 our request, as we've done at the first-day hearing, that the
23 Court keep the customer names, as well as addresses,
24 confidential; that the debtors be permitted to redact
25 customer names and address information both from schedules,

1 as well as the creditors' list, and as well as -- and that
2 the claims agent be permitted to redact name and address
3 information from claims filed by customers. That would --
4 that's it.

5 THE COURT: All right.

6 MR. BONGARTZ: And I understand that the committee
7 -- committee's counsel would like to be heard on this, as
8 well.

9 THE COURT: All right. Let me hear from the
10 committee's counsel, and then I'll go to the trustee.

11 MR. AZMAN: Hi, Your Honor. Good afternoon.
12 Darren Azman, McDermott, Will & Emery, counsel -- proposed
13 counsel to the committee.

14 Before I begin, we do have two declarations that
15 we submitted with our joinder, one from Mr. Segall, and the
16 second from Mr. Friedler. And so I'd ask the Court to move
17 both of those into evidence. Both Mr. Segall and Mr.
18 Friedler are on the line and available for cross.

19 THE COURT: Is there any objection?

20 (No verbal response)

21 THE COURT: Okay. They're admitted without
22 objection.

23 (Segall Declaration received in evidence)

24 (Friedler Declaration received in evidence)

25 MR. AZMAN: Thank you, Your Honor.

1 Your Honor, the sealing motion is of significant
2 importance to the committee, as I'm sure came through on our
3 joinder and the declarations. This is not as simple as
4 creditors just wanting to remain anonymous, it's much more
5 than that.

6 The cryptocurrency space is one that is ripe with
7 fraud. Of course, there's fraud everywhere today, but the
8 risk is far more acute for holders of cryptocurrency. And I
9 think there are really three reasons for that, all of which
10 were laid out in Mr. Friedler's declaration.

11 The first is that cryptocurrency assets are ideal
12 targets for theft because it's incredibly difficult to trace
13 and can be easily liquidated.

14 Second is that cryptocurrency is decentralized.
15 There is no bank. There are few, if any, procedural
16 safeguards that are in place to stop or unwind a fraudulent
17 transaction if it occurs. It's not like a credit card
18 purchase, Your Honor, or a wire transfer, where, if a bank
19 suspects fraud, you're going to get a notification on your
20 phone. Once the crypto is gone, it's gone.

21 And then third, Your Honor, for those two reasons,
22 the debtors' customers in these cases are essentially what we
23 would call "pre-qualified," in terms of being target victims
24 because they naturally hold cryptocurrency.

25 There is a -- I'll be clear, Your Honor. There is

1 a small (indiscernible) in the case, probably around two
2 percent of the unsecured creditor pool, in terms of dollars,
3 who -- you know, for example, the convertible noteholders,
4 who probably don't fall into that bucket. And quite frankly,
5 I don't think we have any objection to those names being made
6 public. We're speaking only about the debtors' customers who
7 are customers are of the debtors, who naturally have held and
8 probably continue to hold cryptocurrency.

9 Your Honor, the second declaration that we
10 submitted is from Mr. Segall, who is a representative for one
11 of the committee members, Maple Partners. The individuals
12 who formed Maple were so concerned about the risks that I
13 just outlined shortly after the bankruptcy filing -- and to
14 be clear, before the committee's appointment, but shortly
15 after the bankruptcy filing -- that they formed a new LLC to
16 hold their crypto, so that, if they were appointed to the
17 committee, and maybe for other reasons, but if their -- they
18 did not want their names to be disclosed.

19 I'm sure there are others out there who have done
20 that, but I'm sure that also a majority of the debtors' 6,500
21 creditors likely don't have the means to do that. And I
22 think it's also noteworthy that a significant portion of the
23 debtors' customers don't even speak English, they're all over
24 the world. So they have no idea that their names may be
25 publicized in these cases.

1 Now, Your Honor, these concerns are not only
2 coming directly from our committee members, but the unsecured
3 creditor body at large, who have been very vocal about many
4 aspects of this case online in various forums. They are
5 scared, not just because they've lost a lot of money, but now
6 because their names may be made public.

7 Your Honor, that's all I have. I don't want to
8 repeat the rest of the argument from our joinder. But I
9 think that the declarations and the argument warrant
10 withholding that information. Thank you.

11 THE COURT: All right. Thank you.

12 Mr. Schanne, before I come back to you, I see Mr.
13 Murley has raised his hand. Do you want to be heard, Mr.
14 Murley?

15 MR. MURLEY: Thank you, Your Honor. Luke Murley
16 of Saul, Ewing, Arnstein & Lehr, on behalf of Maple Partners.
17 We are the committee member Mr. Azman referred to. We join
18 the debtors' motion and the committee's joinder for the
19 reasons stated, and those pleadings and Mr. Azman's
20 presentation. Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Schanne.

23 MR. SCHANNE: Thank you, Your Honor. Again, may
24 it please the Court, John Schanne on behalf of the Office of
25 the United States Trustee.

1 Your Honor, the debtors seek authorization to
2 redact the names and all associated information identifying
3 all the debtors' creditors. Bankruptcy process is founded on
4 principles of transparency and disclosure, limited
5 exceptions, and it's the debtors' burden to meet those
6 exceptions.

7 107(b)(1) permits the Court to protect trade
8 secrets and confidential information. The debtors here
9 assert that the creditor list is potentially a value in
10 marketing the company. That's no doubt accurate for many
11 businesses engaged in a 363 sale, I don't think that's
12 unique. Notably, there's no evidence from any buyer
13 ascribing any value to that list, there's no stalking horse
14 agreement. Should the agreement here, as postured, be
15 sufficient to satisfy (b)(1), we'll have an exception that
16 swallows the rule.

17 I think the real concern, though -- and you heard
18 it in the committee's presentation -- is privacy. I think
19 that's the real focus here, is that people are concerned
20 about their information getting out. And 107(c)(1) allows
21 the Bankruptcy Court to protect individuals. (c)(1)
22 incorporates 1028(d) of Title 18, which, again, protects
23 individuals. The plain language of neither of them apply to
24 protect entities.

25 So what are we talking about here? We're talking

1 about individuals. And with respect to those individuals, we
2 are sensitive to the concerns. We understand. The
3 Bankruptcy Rules, the local rules, they require complete
4 disclosure. The debtors, the committee, they've offered
5 evidence that, if you identify all of that information, there
6 are real concerns there. We're not asking for that. We're
7 asking just for submission of the creditor names. We have
8 not opposed redaction with respect to individuals of any
9 other identifying information, just the names. The Friedler
10 declaration itself admits that just the names may not be
11 sufficient with respect to common names, right?

12 So we have here a hypothesis in evidence that, if
13 all of this information is provided, these bad things may
14 happen. And we're sensitive to that and we understand that
15 and, in fact, you know, we don't oppose that. It's just the
16 names of individuals who are looking to be disclosed. And
17 with respect to entities, I don't believe (c)(1) applies.

18 We saw, during the trustee appointment motion
19 earlier today, disagreement between the committee and Mr.
20 Saracheck about where his creditors fall in the top 30 list.
21 Normally, that would have been easily resolved by looking on
22 the docket and seeing where they fall. Of course, that
23 information is not available here.

24 So debtors assert that the UST has not
25 demonstrated why this information should be public, but that

1 flips the burden. They have to demonstrate why the exception
2 applies here, to where even just the names themselves of
3 individuals cannot be disclosed.

4 So, for that reason, we respectfully request that
5 the motion be denied in its entirety with respect to
6 entities, and granted, for the most part, with respect to
7 individuals that just allow the names to be disclosed. Thank
8 you, Your Honor.

9 THE COURT: All right. Thank you.

10 Mr. Bongartz, any reply?

11 MR. BONGARTZ: Yes. Thank you, Your Honor.

12 I wanted to just make two quick points. This is
13 not comparable to a customer list of a, you know, run-of-the-
14 mill business. I mean, the customer information, because of
15 the anonymity intrinsic in holding Bitcoin, is costly to
16 build. It's costly and expensive to develop a customer
17 database because you don't know who out there holds the
18 cryptocurrency. So that's what makes it an attractive asset
19 or may make it an attractive asset for a potential buyer.

20 The second point I wanted to make is the issue
21 with names is that it's just happenstance. If you have a
22 common name, then maybe you're protected; and if you don't
23 have a common name, you're not. That -- I think we should
24 apply a process that is fair to everyone. And to just have
25 it by sheer luck that you have a common name and, you know,

1 then you're protected is not in the interest of protecting
2 customers, generally. Thank you, Your Honor.

3 THE COURT: Okay. Has the list of names been
4 disclosed to the trustee?

5 MR. BONGARTZ: I believe that it has.

6 THE COURT: Do you have all of the information
7 about the holders of the Bitcoin, Mr. Schanne?

8 MR. SCHANNE: Your Honor, we have been provided
9 the top 30 lists. The schedules and statements have not been
10 prepared, so we do not have that information yet.

11 THE COURT: All right. And is there -- I -- it's
12 been a while since I took a look at this proposed order. Is
13 there anything in this proposed order that provides a
14 mechanism that, if someone can come forward and have a
15 legitimate reason why they need to have access to that list,
16 they can seek to get it?

17 MR. BONGARTZ: Yeah, that mechanism was in the
18 interim order and we've carried it over into the proposed
19 final order.

20 THE COURT: Okay. All right. Then, based on the
21 evidence, I think there is at least some credible argument
22 that the creditor list -- which his, also, in this case, the
23 customer list of the -- of the debtors is -- has some
24 intrinsic value, and that disclosure of that list could
25 affect the ability of the debtors to market and sell that

1 list as a part of their going toward a plan of reorganization
2 here.

3 So I will overrule the objection, so long as the
4 U.S. Trustee is provided with all of the information
5 regarding every single one of the Bitcoin holders, and that
6 there is a mechanism in the final order that allows for
7 someone who can come forward and seek to obtain that list for
8 a legitimate purpose can do so.

9 I think the goal here is to keep this out of the
10 hands of competitors. And so I would expect that, obviously,
11 someone -- or the competitor of the debtor and came forward
12 and said, well, we want to see the list, you're not going to
13 give it to them. But there may be others who have a
14 legitimate reason for why they need that information. And so
15 I want to make sure there's a way for someone who has a
16 legitimate reason to get it, can get it.

17 MR. BONGARTZ: Yes, understood, Your Honor. And
18 just to pinpoint the relevant paragraph, it's Paragraph 3 of
19 the proposed order. But we'll be submitting that --

20 THE COURT: All right.

21 MR. BONGARTZ: -- after the hearing.

22 THE COURT: Okay. Yeah, please confer with the
23 U.S. Trustee and come up with an order that you can submit
24 under COC.

25 MR. AZMAN: Thank you, Your Honor.

1 MR. BONGARTZ: Thank you.

2 THE COURT: Thank you.

3 MR. BONGARTZ: Okay. Moving on, the next item is
4 Item 8 on the agenda. That is the cash management motion;
5 i.e., the motion to authorize the debtor to continue to
6 operate their cash management system, among other things.
7 That was Docket Number 7. Your Honor had granted the cash
8 management order on an interim basis on November 10th.

9 We -- I am aware of two limited objections. One
10 was filed by Jaime Schiller and other customers. I believe
11 that that objection is moot, as a result of Your Honor's
12 ruling earlier this afternoon. They had sought an
13 adjournment of a decision until after Your Honor had ruled on
14 the trustee motion. But I don't -- again, in light of your
15 ruling, I don't think that objection has any -- you know,
16 it's still alive.

17 The other limited objection was filed by the U.S.
18 Trustee. I should note that we did incorporate a series of
19 comments, informal comments, that the U.S. Trustee provided
20 to us, and we have attached a blackline to our reply at
21 Docket Number 215. And if Your Honor would like, I can walk
22 you through those changes. But my understanding is that
23 these changes are acceptable to the U.S. Trustee, and I don't
24 know if he has any further issues outstanding, but I believe
25 that we're in agreement on the form of order.

1 THE COURT: Okay. Mister --

2 MR. BONGARTZ: And the only issue with the U.S.
3 Trustee that is remaining is whether Section 345(b) requires
4 the debtor here to essentially sell all their cryptocurrency.
5 On that point, I should -- I would like to make a few
6 comments.

7 The first one is -- and we've mentioned this in
8 our reply -- is that we do not believe that cryptocurrency
9 constitutes, quote, "estate money" for purposes of Section
10 345, so we don't believe it applies. Cryptocurrency has been
11 held by other courts to be a commodity, not money, it's not
12 legal tender, it's not accepted as currency by the
13 Government; and so, therefore, we don't believe that 345(b)
14 applies. But in any event, even if it does, we believe that,
15 in this instance, a waiver should be granted.

16 This is a -- cryptocurrency is the lifeblood of
17 this company. It's comparable to the oil or other commodity
18 -- or commodities businesses. And to require the debtors to
19 sell out -- sell down all its cryptocurrency would
20 essentially deprive it of one of its key assets.

21 I should also note that, in addition, as a result
22 of the plan support agreement that the debtors have entered
23 into with the committee, the committee has oversight over the
24 debtors' cryptocurrency positions. The debtors have agreed to
25 provide weekly reporting. And the committee has consent

1 rights if the debtors wanted to sell cryptocurrency beyond
2 what is permitted under the budget. And in light of all of
3 the foregoing, we request that the Court approve the proposed
4 waiver of Section 345(b), which is in Paragraph 10 of our
5 proposed form of order. Thank you.

6 THE COURT: Mr. Schanne, are your objections all
7 resolved?

8 MR. MCMAHON: Your Honor, if I may, Mr. McMahon
9 again.

10 THE COURT: Oh, go ahead, Mr. McMahon.

11 MR. MCMAHON: Your Honor, good afternoon. With
12 respect to the cash management order, just one note.
13 Debtors' counsel I don't think characterized our position
14 correctly. Because of the presence of the cryptocurrency in
15 e-wallets, which the debtors are holding, the motion turns
16 out to be a hybrid Section 345/363 motion.

17 There's risk with maintaining the position in
18 cryptocurrency. With the understanding now that the
19 committee has been appointed since the last order was entered
20 and they are not objecting to holding the crypto, as the case
21 may be, we are okay with the revised proposed form of order
22 and we're not maintaining an objection to the motion going
23 forward.

24 THE COURT: Okay. Thank you, Mr. McMahon.

25 Anyone else wish to be heard?

1 MR. AZMAN: Your Honor, it's Darren Azman again,
2 from McDermott, proposed counsel to the committee.

3 The only thing I'd add is this is an issue that we
4 are very much focused on, as Mr. Bongartz mentioned. It's a
5 line item in the PSA and it's something that we're going to
6 be looking at even more closely over the next few days and
7 coming weeks, to determine whether there's sufficient
8 liquidity and what needs to be done with the crypto, but
9 there is no decision that's been made yet.

10 THE COURT: Okay. Thank you.

11 Anyone else?

12 MR. SILVER: Your Honor, it's David Silver of
13 Silver Miller, representing Jaime Schiller.

14 As stated previously, just for the record, our
15 limited objection is mooted by the earlier decision, and we
16 withdraw it.

17 THE COURT: Okay. Thank you.

18 All right. Then, based on the record presented,
19 I'm satisfied the relief requested is appropriate, including
20 the waiver of Section 345(b) in the order, and I will enter
21 that order.

22 MR. BONGARTZ: Thank you, Your Honor.

23 Moving on to the next item on the agenda, that is
24 the employee wage motion, which is filed -- sorry, I
25 (indiscernible) -- Docket Number 11. Again, Your Honor will

1 recall that you had granted that motion on an interim basis
2 at the November 10 first-day hearing.

3 We, again, have a limited objection by Jaime
4 Schiller and other customers. And for the same reasons I've
5 stated earlier, I believe that that objection is mooted by
6 Your Honor's earlier ruling.

7 We have also received a number of informal
8 comments from the U.S. Trustee, which I believe we have
9 incorporated, although I don't know for certain whether the
10 U.S. Trustee is signed off on the form of order. So I'd be
11 happy to walk Your Honor through the proposed order.

12 There's actually one point I wanted to make --
13 sorry, I just saw it in my notes -- and one change that we do
14 need to make in the form of order that was submitted. And I
15 don't know -- I don't know if Your Honor has a copy of that
16 handy. It was attached -- it was -- sorry. It was filed at
17 Docket Number 214. And this is in Paragraph 4 of that
18 proposed order, this was a -- this is a glitch that crept in
19 because we were trying to incorporate both comments we've
20 received from the committee, as well as comments we've
21 received from the U.S. Trustee.

22 I just wanted to make absolutely clear -- and
23 we'll reflect that in the draft -- in the form we'll submit
24 to chambers -- is that, if the debtors want to make any bonus
25 or incentive payments to non-insiders, or want to make bonus,

1 incentive, or severance payments to insiders, they will have
2 to come -- or we will have to come back and obtain an order
3 from this Court, and we'll have to do so on notice to
4 parties-in-interest. I wanted to make absolutely clear we're
5 not going to move forward with that solely with the consent
6 of the committee. We will come back to Your Honor, and we
7 will, if the chooses to make any such -- make any such
8 payments, we'll come back and seek entry of an order.

9 And obviously --

10 THE COURT: Okay.

11 MR. BONGARTZ: -- that is what we had agreed to
12 with the U.S. Trustee. And I just wanted to make clear that
13 that is still the agreement and that will be reflected in the
14 form of order.

15 THE COURT: Okay. Thank you.

16 Mr. McMahon, are your issues resolved?

17 MR. MCMAHON: They are, Your Honor. No further
18 comments.

19 THE COURT: Okay. Thank you.

20 Anybody else wish to be heard?

21 (No verbal response)

22 THE COURT: All right. I'm satisfied, based on
23 the record, that the requested relief is appropriate.
24 Subject to submitting the final form of order under
25 certification of counsel, we'll get that order entered.

1 MR. BONGARTZ: Thank you, Your Honor.

2 So the next item on the agenda is the bar date
3 motion. With Your Honor's permission, I would actually
4 propose that we go slightly out of order because it -- I
5 think it logically makes more sense to first consider the
6 motion to extend time to file schedules, and then we can look
7 at the bar date motion, which sort of -- which flows from
8 that. So I would, with Your Honor's permission, jump to Item
9 17 on the agenda.

10 THE COURT: That's fine.

11 MR. BONGARTZ: Okay. Thank you.

12 So I know that there has been a little bit of a --
13 you know, that there's been two motions filed, an original
14 motion and an amended motion, and then we filed a revised
15 proposed order. This was primarily the result of learning
16 what the situation on the ground is and getting new
17 management in place. We had initially anticipated that the
18 schedules would be completed by December, late December.

19 But in light of having to replace -- or having to
20 replace management, including putting in a new CRO, replacing
21 the CFO, and the controller going on maternity leave, and in
22 light of the vast amount of information -- as Your Honor will
23 recall, there are more than 6,000 customers -- that December
24 deadline or -- that we had initially proposed was no longer
25 feasible.

1 We had then filed an amended motion, asking to
2 push that deadline to January 22nd. And then, after
3 discussions with the committee and after further, you know,
4 analysis of what needed to be done in order to complete the
5 schedules, we're comfortable with only asking for an
6 extension to January 7th. So that cuts it back by 15 days
7 from what we had proposed in our amended motion. That -- so
8 that's our current request.

9 I should also note that that date is consistent
10 with the deadline or the milestones set forth in the plan
11 support agreement with the committee, and I understand that
12 the committee supports the extension to -- the extension of
13 the deadline to January 7th. Thank you.

14 THE COURT: Thank you.

15 Is there anyone else who wishes to be heard? Mr.
16 McMahon?

17 MR. MCMAHON: Your Honor, again, good afternoon.
18 Very quickly.

19 Initially, this motion was going to be tabled
20 because, in the normal scheme of things, Your Honor, bar date
21 motions don't go out until the debtors complete this task.
22 So, in light of the revised, I guess, proposal with the
23 committee for January 7th, our office is not objecting to
24 that date now, in light of the, you know, two-week concession
25 over what was originally proposed.

1 But I was expecting the bar date motion to be
2 continued. I would like to be heard on that item, Your
3 Honor, when we get to it momentarily.

4 THE COURT: Okay.

5 MR. MCMAHON: But no objection --

6 THE COURT: No objection on the motion to extend
7 the date to file schedules, though, right?

8 MR. MCMAHON: Correct.

9 THE COURT: Okay. Thank you.

10 Anyone else?

11 (No verbal response)

12 THE COURT: All right. I'm satisfied that relief
13 is appropriate. I will grant that order.

14 MR. BONGARTZ: Thank you, Your Honor.

15 And now we -- I'm going to turn to the bar date
16 motion, which was at -- it's filed at -- it's on -- sorry --
17 it's Agenda Item 10.

18 So we are requesting that the general bar date be
19 set for February 10th. That date is driven, in large part,
20 by the milestones under the plan support agreement. We need
21 to have a bar date before solicitation can begin. And it is
22 crit -- absolutely critical in this case, given the limited
23 resources available, that these cases move forward as
24 expeditiously as possible.

25 We submit that a period of 30 days, plus or minus,

1 between the date on which the schedules will be filed -- and
2 they may actually get filed sooner than January 7th, but
3 that's the outside date -- and the proposed bar date of
4 February 10 is appropriate under the circumstances.

5 But I'm -- I should also note that the committee
6 supports the bar date of February 10, and I don't -- I
7 understand the U.S. Trustee has a -- objects to the motion
8 going forward, but I'll let him present that argument.

9 THE COURT: Okay. Mr. McMahon?

10 MR. MCMAHON: Very quickly, Your Honor.

11 The way things typically work in a case that
12 appears before this Court is schedules are filed, creditors
13 get to see how their claims are scheduled -- you know,
14 whether they're contingent, unliquidated, or disputed -- such
15 that, when the proof of claim bar date does come, perhaps
16 they don't have to file a proof of claim if they agree with
17 what's scheduled.

18 Second, Your Honor, it also gives the parties-in-
19 interest an opportunity to pressure-check the schedules.
20 There is a potential for abuse -- and I'm not suggesting that
21 it's going to occur here. But sometimes, you'll have
22 situations where, you know, every creditor is marked
23 contingent, unliquidated, or disputed, and the debtors don't
24 do their diligence with respect to accurately preparing the
25 schedules.

1 What I've said to debtors' counsel is a couple of
2 things:

3 First, I'm prepared to act within 48 hours of the
4 January 7th schedules deadline to take a look at them and to
5 advise them whether or not we have any issues with respect to
6 what's been assembled. If there are, we can contact the
7 Court and perhaps have a teleconference. If we don't have
8 issues, Your Honor, then the bar date notice can go out
9 immediately on the heels of our making that determination.

10 So, you know, I'm going by the way, you know,
11 things are typically done. And they things are typically
12 done do not involve the bar date notice going out in advance
13 of the schedules being filed.

14 MR. AZMAN: Your Honor, may the committee be heard
15 briefly?

16 THE COURT: Go ahead.

17 MR. AZMAN: Darren Azman again for the committee.

18 What Mr. McMahon proposes would effectively extend
19 the life of these Chapter 11 cases by three to four weeks, so
20 that's another month of professional fees and U.S. Trustee
21 quarterly operating fees.

22 I hear Mr. McMahon that, in many cases -- maybe
23 most -- that's not the -- necessarily the exact order things
24 go in. But there's nothing in the Bankruptcy Rules or the
25 Bankruptcy Code that prevents it, on the one hand. And

1 moreover, creditors are going to have an opportunity to see
2 the schedules. January 7th is when the schedules will be
3 filed; the bar date will be a month later. We're just
4 talking about the notice of the bar date going out now, so
5 that we can expedite these cases.

6 And so I don't really follow Mr. McMahon's logic.
7 They will see the bar date notice. And if they want to file
8 a proof of claim before the schedules are filed, that's up to
9 creditors. Alternatively, they can wait until they see them
10 on January 7th. Thank you.

11 THE COURT: Mr. Bongartz, does the bar date notice
12 that you're proposing to send out indicate that the schedules
13 will be filed no later than January 7th?

14 MR. BONGARTZ: I believe it does. But if it
15 doesn't, we will make sure to add it.

16 THE COURT: Okay.

17 MR. BONGARTZ: When -- I think --

18 THE COURT: Yeah.

19 MR. BONGARTZ: -- there is a provision in there
20 that the schedules have been filed. But I will absolutely
21 make clear that the January 7th deadline is mentioned.

22 THE COURT: All right. Well, I think, if we send
23 out the bar date notice with a date of -- I've lost my notes
24 here -- of February 10th for the bar date, and we've sent out
25 a notice that says a schedule will be filed by January 7th,

1 and you don't have to file your proof of claim until after
2 the schedules are filed, that should take care of the
3 situation. Does that resolve your issue, Mr. McMahon?

4 MR. MCMAHON: Yeah, I --

5 MR. BONGARTZ: Your Honor, I think --

6 MR. MCMAHON: Your Honor --

7 MR. BONGARTZ: -- I've actually -- I should note
8 one more thing. I believe that the way we've set this up is
9 that the notice goes out -- there will be a customized proof
10 of claim form, which will include the scheduled amounts on
11 the front page. So what will go out to the customers will
12 inform them directly, on the proof of claim form that they
13 would -- can submit themselves, what the scheduled amount of
14 the claim is.

15 THE COURT: Well, how are you going to do that
16 before the schedules are filed?

17 (Participants speak simultaneously)

18 THE COURT: Hold on. One at a time. Mr.
19 Bongartz?

20 MR. BONGARTZ: The way this works -- and I
21 apologize for -- if I misspoke earlier -- the notice will go
22 out after the schedules have been filed.

23 THE COURT: So notice will go out on what, what
24 day are you proposing?

25 MR. BONGARTZ: I think we will do this within five

1 business days after the schedules have been filed. I think
2 there's a -- yeah, five business days.

3 THE COURT: That puts you at January 14th. And
4 the bar date is what?

5 MR. BONGARTZ: February 10th.

6 THE COURT: That's almost four weeks, Mr. McMahon.

7 MR. AZMAN: Your Honor, may the committee be heard
8 briefly? Because this is not consistent with -- I think this
9 is a mistake, and the committee would not support that. Our
10 understanding, as is laid out in the -- there is no way to
11 comply with the PSA time line if that is when the bar date
12 notice is going to go out.

13 THE COURT: All right. So I --

14 MR. AZMAN: I mean, there's -- I guess. Sorry.
15 I'm sorry. Technically, you can still comply with the time
16 line. But the committee is concerned, there are a lot of
17 international creditors in this case who will probably need
18 more time than three to four weeks to get a proof of claim
19 in. And we had asked the committee to push back the bar date
20 to February 10th for that purpose.

21 And so, effectively, if we're now saying the bar
22 date notices are going to go out right after the schedules
23 are filed, on or around January 7th, we basically -- we don't
24 have what we negotiated for. And I apologize if this is a
25 mistake that wasn't -- you know, we didn't see this before we

1 came to the hearing today. But that's not what the goal of
2 the negotiated settlement was. We think that (indiscernible)
3 more than the three or four weeks. And so --

4 THE COURT: All right.

5 MR. AZMAN: -- we would want --

6 THE COURT: So --

7 MR. AZMAN: -- the bar date notice to go out now.

8 THE COURT: All right. I think the -- I think we
9 need to continue this motion, and hopefully the parties will
10 confer and submit a form of under -- a form of order under
11 COC. But in my view, that form of order, as long as -- if
12 the notice is going to go out now or in the next few days,
13 and it contains a description of when the bar date will be
14 and when the schedules are going to be filed, and explaining
15 that the creditor does not have to file a proof of claim
16 until after the schedules are filed, that would resolve the
17 issues that I would have with the motion.

18 So I'm going to ask the parties to -- I'm going to
19 continue this motion and let the parties confer and come back
20 to me. If you can't resolve it, contact chambers, and we'll
21 get another hearing scheduled for you -- well, either Monday,
22 Tuesday, or Wednesday next week.

23 MR. BONGARTZ: Thank you, Your Honor.

24 MR. AZMAN: Thank you, Your Honor.

25 THE COURT: All right? Anything else for today?

1 MR. BONGARTZ: I think we're moving on to the next
2 agenda item, and I believe that is a retention application.
3 I don't have the agenda in front of me right now, but one --
4 excuse me one second.

5 MR. GROGAN: Your Honor, yes. We have the
6 debtors' professionals' retention applications.

7 THE COURT: All right. Okay.

8 MR. GROGAN: If Mr. Bongartz is done, I will
9 handle those.

10 THE COURT: Are they --

11 MR. BONGARTZ: There's one other motion that I was
12 tasked with handling, that's the bidding procedures motion.
13 I don't know if you want to take that out of sequence. I'm
14 happy to do it either one.

15 THE COURT: Let's go ahead and do bidding
16 procedures and then move on to retention.

17 MR. BONGARTZ: Okay. Okay. So the bidding
18 procedures, that is Item Number 16 on the agenda.

19 Here, I just wanted to lay out real briefly the
20 proposed time line, which includes a January 12th deadline to
21 designate a stalking horse. The final bid deadline would be
22 January 15. An auction, if necessary, would be held on
23 January 18th. The objection deadline for the sale would be
24 January 22nd, and then a sale hearing would happen in early
25 February, subject to Your Honor's availability. We have

1 filed a blackline and a proposed order at Docket Number 225.

2 I understand that there are a couple of objections
3 that have been filed. The first one is the limited objection
4 of Jaime Schiller and other customers. Again, for the same
5 reasons as stated earlier, we believe that that objection is
6 mooted by Your Honor's ruling earlier today.

7 The second objection that was filed was filed by
8 Mr. Arehart. And he had raised a concern that there were
9 certain assets that Mr. Arehart believes are his property,
10 and that there should be a provision in the proposed order
11 that precludes -- in effect, precludes the sale of his
12 alleged assets.

13 I would note that, at this point, we believe that
14 his concerns are premature. There is no buyer lined up at
15 this time. We don't know which contracts such buyer -- such
16 hypothetical buyer would want to assume, what cure amounts
17 would get paid. And so there's no -- and as a result, no one
18 is currently proposing to purchase any cryptocurrency under
19 the -- a bid procedures at this time. It is possible that
20 that may be the case.

21 But I should also note that -- and one of the
22 comments that the committee has made and that we have
23 accepted is that, if cryptocurrency is to be sold through the
24 sale process, that would require the consent of the
25 committee.

1 And my final note on this is that Mr. Arehart's
2 ability to object to the sale is when it happens. And to the
3 extent it includes property that he believes is his property,
4 he certainly has the ability to object to that at a later
5 time.

6 THE COURT: Thank you, mister --

7 MR. BONGARTZ: And then the last -- the third
8 objection which I wanted to address briefly is the objection
9 -- the general objection by the U.S. Trustee. He has raised
10 two issues, the first one is with respect to timing. Again,
11 we believe that that is mooted by Your Honor's ruling
12 earlier.

13 So I think we can move on to the second point, and
14 that is the stalking horse protections. We believe that we
15 have put in appropriate safeguards that should address the
16 U.S. Trustee's concerns. There is a cap on any breakup fee
17 of three percent. The committee's consent is required. And
18 most certainly the U.S. Trustee's rights to object to the
19 winning bid are fully preserved. So, to the extent that he
20 disagrees with the selection of the stalking horse as --
21 which, if he -- if that entity prevails at an auction and
22 becomes a successful bid, the U.S. Trustee can object to that
23 selection at that point, as well.

24 So, with that, we have submit -- submitted a
25 revised proposed order that does reflect a few other comments

1 from the U.S. Trustee, including the addition in Paragraph 32
2 of the appointment of an ombudsman if a sale -- if a sale
3 does go forward. And we submit that, with these changes, the
4 bid procedures order should be entered.

5 THE COURT: All right. Thank you.

6 Is Mr. Arehart's counsel on the call?

7 MR. NEFF: Yes, Your Honor. This is Carl Neff
8 from FisherBroyles on behalf of Mr. Arehart. And I
9 apologize, I'm not in Zoom -- oh, it looks like I'm
10 connecting right now. I -- with me on the call is my
11 colleague Hollace Cohen of FisherBroyles, who has been
12 admitted *pro hac vice* in this action and will be addressing
13 the Court.

14 THE COURT: Okay. Ms. Cohen?

15 (No verbal response)

16 THE COURT: Ms. Cohen, you're on mute.

17 MS. COHEN: This is Hollace Cohen, Your Honor.
18 And we accept the debtors' view that the issues raised by
19 both Mr. Arehart in the limited objection and by the debtor
20 in their reply to the limited objection are premature, and
21 that -- and also, the debtors' acknowledgment that Mr.
22 Arehart will have the opportunity to object to any sale or
23 sales on or prior to the sale objection deadline, so we're
24 fine with that.

25 THE COURT: Okay. Thank you. I appreciate that,

1 Ms. Cohen.

2 MS. COHEN: Yes.

3 THE COURT: Mr. McMahon, are the U.S. Trustee's
4 issues resolved, or do you have still have objections?

5 MR. MCMAHON: Your Honor, I have one point to
6 raise, which is that having to do with the bid protections.

7 THE COURT: Okay. Go ahead.

8 MR. MCMAHON: There's a controlling Third Circuit
9 case called environmental -- O'Brien Environmental Energy,
10 which provides that bid protections are subject to
11 administrative expense review. We -- first, we don't have a
12 bidder here, so we'd have to know who the bidder is. And
13 then, after notice and a hearing, once we have an agreement,
14 then we can assess whether or not that person, that stalking
15 horse is entitled to protection.

16 So -- and the case is very clear, Your Honor.
17 There are some bidders who are naturally inclined to bid, say
18 Michelin tires would theoretically buy -- you know, be a
19 bidder for Goodyear. And therefore, you wouldn't need to
20 incentivize a bidder with bid protections. So this entire
21 construct, we don't go along with the -- you know, what I
22 call a "putting money on the street" approach, where we --
23 you know, we basically just authorize the debtors and the
24 committee to hand out bid procedures like they're some form
25 of candy.

1 You know, this Court controls the process. We
2 don't know who the prospective bidder is that would be
3 receiving the protections. At that point, the issue will be
4 ripe and the Court can decide it. That's our concern, Your
5 Honor. Thank you.

6 THE COURT: Well, is there anything in the order
7 that says that these bid protections will be provided to
8 anyone who bids, or is it -- because I agree with you, Mr.
9 McMahon; O'Brien does say that there is the possibility that
10 bid protections are not appropriate for certain bidders. So
11 how can I provide providing bid protections to somebody
12 before I even know who's doing it? Mr. Bongartz?

13 MR. BONGARTZ: Yes, Your Honor. We believe that
14 the -- well, the first point I should note that is that the
15 bid -- I'm sorry -- the stalking horse will be designated, so
16 we will be filing a notice. This won't be, you know, kept in
17 secret, who the stalking horse is.

18 The second point I would note is that we're not
19 going to select or designate a stalking horse that's not
20 fully supported by the committee, so that should provide, I
21 think, an appropriate safeguard.

22 THE COURT: Well, do we need to put anything in
23 this order, at this time, about what bid protections will be
24 provided to an as-yet-undisclosed stalking horse bidder? Why
25 don't we just wait and see what the stalking horse bidder

1 asks for?

2 MR. BONGARTZ: If that's Your Honor's ruling,
3 we'll -- we will accept that, of course.

4 THE COURT: Okay. I think that's appropriate. I
5 don't think it's appropriate, at this point, to put into an
6 order, before we even know who the stalking horse bidder is
7 going to be, that they are entitled to bid protections.

8 That's something we can deal with once we get to the sale.

9 MR. BONGARTZ: Okay. We will revise the proposed
10 order accordingly and submit it under certification of
11 counsel.

12 THE COURT: Okay. Anyone else wish to be heard on
13 this motion?

14 (No verbal response)

15 THE COURT: All right. So I will wait to see the
16 revised order under COC, and once we get that, we can get it
17 entered for you.

18 MR. BONGARTZ: Thank you.

19 THE COURT: All right. All right. Mr. Grogan,
20 you were going to do the retentions?

21 MR. GROGAN: Yes, Your Honor. Thank you very
22 much.

23 THE COURT: Okay.

24 MR. GROGAN: James Grogan from Paul Hastings on
25 behalf of the debtors.

1 Your Honor, Agenda Item Number 11 is the debtors'
2 application for entry of an order authorizing the employment
3 of MACCO -- M-A-C-C-O -- Restructuring Group as financial
4 advisor. That was supported by the declaration of Drew
5 McManigle.

6 We did have a couple of objections, neither of
7 which I think is material.

8 The first one, the U.S. Trustee had included the
9 MACCO retention application in a general objection, which I
10 believe is now moot. Basically, the issue was we need to
11 wait and see whether a trustee is appointed before retaining
12 the advisors.

13 We also received an objection from Mr. Inamullah.
14 And I -- it was -- my interpretation of it was that he took
15 issue with the conflicts list that was -- or the parties-in-
16 interest list that was attached to the application, which
17 listed him as one of the debtors' officers. You know, I
18 don't think we're making any rulings on that list in this
19 particular application, but I did want to note that that was
20 out there.

21 Unless the U.S. Trustee had any further comments,
22 I think this one is essentially uncontested.

23 THE COURT: Mr. McMahon, any objections to the
24 retention?

25 MR. MCMAHON: No, Your Honor. The revised

1 proposed form of order is acceptable.

2 THE COURT: All right. Is Mr. Billion on the
3 phone? I believe he was counsel to Mr. Inamullah.

4 (No verbal response)

5 THE COURT: No. Okay. So, to the extent he still
6 had an objection, I'll overrule it and I will enter the
7 order.

8 MR. GROGAN: Thank you, Your Honor.

9 If I might go out of order just a little bit, save
10 Teneo for last. The next one would be the application to
11 retain Paul Hastings as counsel to the debtors.

12 Your Honor, since the application was filed at
13 Docket Number 64, we have filed two additional declarations
14 in support of -- one was filed at Docket Number 182 and the
15 second one was filed at Docket Number 233.

16 The U.S. Trustee had taken issue with several
17 items in the application. In conferring with Mr. McMahon, I
18 believe we have resolved one of those issues at this point.
19 Mr. McMahon has objected based on Pillowtex with respect to a
20 couple of invoices that were paid prepetition.

21 To resolve that, we have agreed that we would
22 return \$313,330.40 to the trust account for the debtors and
23 waive the associated prepetition fees, if we are retained by
24 the court. As a result of that, the debtors' retainer
25 account would increase to \$349,477.26.

1 However, I don't think that resolves all of the
2 issues. The U.S. Trustee had also objected to a couple of
3 additional issues. One was the prepetition work that Paul
4 Hastings performed for the debtors and -- let me just sort of
5 explain my interpretation and then, you know, I guess, we'll
6 hear from Mr. McMahon.

7 So our view is that this should be governed, our
8 disinterestedness, should be governed by Marvel Entertainment
9 Group, the Third Circuit decision from 1998. It's reported
10 at 140 F.3d 463.

11 The Marvel case holds that if a professional has an
12 actual conflict, it cannot be employed. If a professional
13 has a potential conflict, its employment is within the
14 discretion of the court. And the court may not disqualify a
15 professional on the appearance of a conflict alone.

16 Apologies, Your Honor. Choked up. It was a
17 moving decision.

18 Since Marvel was decided as, you know, bankruptcy
19 court in Delaware has issued a lot of interpretative
20 decisions, one of which was relatively recent -- Art Van
21 Furniture. Chief Judge Sontchi decided that. That -- the
22 Art Van Decision was reported at 617 B.R. 509 B.R. Del 2020.

23 I think the situation here is relatively similar
24 to Art Van. One of the issues that Mr. McMahon has taken
25 issue with is that we have an existing client relationship

1 with a company called Uphold. Uphold is another
2 cryptocurrency business.

3 We are currently representing -- and we discussed
4 this in all three of the declarations I filed in support of
5 our application.

6 We represent Uphold in matters unrelated to Cred.
7 Prepetition, we had one matter that involved both Cred and
8 Uphold. And it was a -- we agreed to advise Uphold and Cred
9 jointly on some litigation that was filed in the state of
10 Washington by a company called Decrypt Capital. And there
11 were some additional plaintiffs related to Decrypt.

12 Our representation was very short and actually the
13 Cred entity, which was Cred (US) LLC. It's one of the
14 subsidiary debtors here, was dropped from the case. So a
15 debtor is no longer an actual party in that litigation. At
16 this point, it's purely a litigation between Decrypt and
17 third parties, including Uphold, but we are not representing
18 Uphold.

19 We're not representing any of the individual
20 plaintiffs or, I should say, individual defendants. We have
21 no role in the case at all. And the debtors have no role in
22 the case. Other than that, all the other representations
23 with Uphold have nothing to do with Cred.

24 In terms of whether there is an actual conflict
25 there, there just isn't. Uphold has a claim against Cred

1 which, as the testimony earlier today shows, is being
2 resolved.

3 Mr. Cousins, whose been handling that on behalf of
4 the debtors, ably. Mr. Foster is in active negotiations with
5 them. As he testified earlier, we expect to be filing a
6 stipulation regarding the return of a very small amount of
7 bitcoin. I think it's literally 2.4 bitcoin plus some
8 additional forms of cryptocurrency that was held in an
9 account with Uphold.

10 But there's no evidence that Paul Hastings is
11 anything but disinterested in what happens with Uphold in
12 this case. Uphold, as I put in my most recent declaration,
13 represents .05 percent of Paul Hastings revenues over the
14 last twelve months.

15 This exact same situation was litigated in Art Van
16 Furniture. And in that case, the proposed debtors' counsel,
17 which was ultimately approved for retention, had represented
18 Wells Fargo which was actually a secured lender in the case
19 and Wells Fargo represented .5 percent or ten times as much
20 of the firm's avenue revenues.

21 Nevertheless, Judge Sontchi held that there was no
22 actual conflict. I would also add that we received
23 reciprocal waivers when the Decrypt engagement letters were
24 signed. I have shared those with Mr. McMahon and his office.
25 And, you know, there's just no actual conflict. There's not

1 even a potential conflict.

2 In addition, Mr. McMahon has taken issue with some
3 of the other prepetition work that we did for Cred. In the
4 first instance, we had advised Cred on the private placement
5 convertible notes which were issued in the amount of \$2.6
6 million dollars. And nobody has raised any issues regarding
7 our advice on those private placement convertible notes.

8 One of the noteholders is actually a member of the
9 creditors committee. In fact, it's the largest noteholder
10 and the committee does not object to our retention in this
11 case. Nobody has ever raised a single issue regarding that
12 advice.

13 We also had advised Cred on some litigation
14 against Mr. Alexander and what we did prepetition was we
15 filed a lawsuit against Mr. Alexander in the state of
16 California to get injunctive relief after it came to light
17 that Mr. Alexander had taken 225 bitcoin as the court heard
18 earlier today.

19 Not only has nobody questioned the quality of the
20 work, as I attached the orders from the California court to
21 the declaration that we filed at Docket Number 233, the
22 California court granted both a TRO against Mr. Alexander and
23 a preliminary injunction specifically finding that Cred was
24 likely to succeed on the merits.

25 There is zero evidence that anything we did in

1 connection with that litigation was anything but flawless.
2 There are no conflicts here at all. And so, we would request
3 that the court approve our retention.

4 Thank you very much.

5 THE COURT: Thank you.

6 Mr. McMahon.

7 MR. MCMAHON: Your Honor, I'll be brief. Before I
8 begin, I would like to start with just establishing what the
9 record is, from our perspective.

10 The Grogan declaration, the supplemental
11 declaration, will be the first two items. Third, we would
12 like to submit certain of Mr. Shatt's testimony with respect
13 to Uphold, specifically that Uphold's platform was the source
14 of approximately 30 to 40 percent of the debtors' business.
15 That's part of his deposition transcript, page 116, lines 10
16 to 12.

17 Next, three U.S. Trustee exhibits relating to
18 Decrypt which were part of the exhibits that we submitted to
19 the court yesterday in connection with the hearing. There's
20 two engagement letters, one for Cred, one for Uphold, that
21 Paul Hastings has with those respective clients. And then,
22 separately, the Decrypt amended complaint which is the third
23 exhibit.

24 Finally, Your Honor, there are also two judicial
25 notice documents we'd like to take notice of -- the Alexander

1 motion to dismiss and the Alexander complaint; provided that
2 those are submitted or admitted in evidence, I'll proceed
3 with my argument.

4 THE COURT: Any objection?

5 MR. GROGAN: Well, I do object to the admission of
6 Alexander's motion if it's for the purpose of establishing
7 the truth of the matters asserted. We disagree with it,
8 obviously. If it's just for the purpose of establishing that
9 a motion was filed, that's fine.

10 THE COURT: I will accept it only for that purpose
11 and the other exhibits are either admitted or I will take a
12 judicial notice of them.

13 (Trustee's Exhibit, Alexander Motion to Dismiss,
14 Alexander complaint, received into evidence)

15 MR. MCMAHON: Thank you, Your Honor.

16 As stated in our objection, Section 327(a) of the
17 Bankruptcy Code provides that counsel to a debtor-in-
18 possession has to meet two requirements. It can neither hold
19 nor represent an interest adverse to the estate and, second,
20 it must be a disinterested person.

21 And that definition is in the Code. I'm not going
22 to repeat it (indiscernible) that. It provides that -- Your
23 Honor, may I have one moment?

24 THE COURT: Sure.

25 MR. MCMAHON: I'm sorry. Thank you.

1 THE COURT: Yes, go ahead.

2 (Pause)

3 MR. MCMAHON: I'm sorry for the interruption, Your
4 Honor.

5 THE COURT: That's all right.

6 MR. MCMAHON: A disinterested person is a person
7 that does not have an interest materially adverse to the
8 interest of the estate or any class of creditors or equity
9 security holders by reason of any direct or indirect
10 relationship to connection with or interest in the debtor or
11 for any other reason.

12 In our objection, we point out four areas of
13 concern. First, the convertible note representation.
14 Second, the representation of the debtors in connection with
15 the response and in the corporate fix with respect to
16 corporate governance issues involving Cred Capital. Third,
17 the Uphold issues with respect to these cases. And then,
18 fourth, the Pillowtex related issues.

19 I'll take each concern in turn.

20 The convertible note placement, the sheer timing
21 of same within ninety-days prior to the debtors' bankruptcy
22 filings means that the placement is going to be subject to a
23 level of scrutiny in connection with these cases, certainly
24 after the examiner has been appointed by Your Honor.

25 Next, the court for governance issues involving

1 Cred Capital. The issue here is such where if the court
2 agrees with Alexander's view of the legal fact of the steps
3 that Cred took with Paul Hastings' counsel which allegedly
4 included a reorganization of Cred's equity structure at the
5 expense of the sole voting class of equity and Cred Capital,
6 then the bankruptcy filing by Cred Capital was not
7 authorized.

8 Next, Paul Hastings was retained by Uphold and
9 Cred in connection with the Decrypt litigation in mid-
10 September that predates Paul Hastings retention by the
11 debtors in connection with the bankruptcy which didn't occur
12 until later in October.

13 With reference to Uphold, Your Honor, Paul
14 Hastings has what we believe to be an actual conflict of
15 interest. Paul Hastings represented to Cred and Uphold
16 entities jointly, then at the point at which the debtors
17 filed for bankruptcy protection, Your Honor is going to hear
18 about this, the past couple of days.

19 Their interest clearly diverged. Uphold will be
20 asserting claims against the debtors in connection with these
21 bankruptcy cases and Uphold's claims against the debtors
22 stemming from the uniform protocol token offering which is
23 the subject of the litigation, the Decrypt litigation, are
24 going to be part of those claims.

25 Standing here today, Your Honor, Paul Hastings

1 cannot represent the debtor with respect to those claims. In
2 fact, Your Honor got a flavor for it earlier today when Mr.
3 Cousins handled, you know, the Uphold related issues. That's
4 an actual conflict of interest. And --

5 THE COURT: Does that resolve the issue? I Mr.
6 Cousins can represent any claims from Uphold, can he deal
7 with those and how does that affect then the retention of
8 Paul Hastings?

9 MR. MCMAHON: Your Honor, because it doesn't
10 change the fact that the firm, whatever they have, the actual
11 conflict of interest. It certainly addresses the need for
12 Uphold's, I guess, ability to have un-conflicted counsel, but
13 the law firm, it doesn't address any issues with respect to
14 the law firm itself.

15 THE COURT: Well don't we appoint conflict's
16 counsel all the time in cases when the bankruptcy counsel has
17 a conflict, we appoint a conflict counsel to deal with any
18 issues involving that particular party.

19 MR. MCMAHON: And, Your Honor, again, that, you
20 know, understood that that does occur with respect to certain
21 types of matters. I mean this is a situation where Mr.
22 Schatt testified that he estimates that Uphold's platform was
23 the source of approximately 30 to 40 percent of the debtors'
24 business. Uphold and its customers are a significant part of
25 these bankruptcy cases.

1 This is not like a bit proof of claim issue.

2 Uphold has got a significant relationship with the debtors.

3 For the record, Your Honor, the proposed Pillowtex
4 resolution by Paul Hastings involved in what Mr. Grogan
5 described would resolve our issues with respect to that
6 point.

7 So, Your Honor, we view the Uphold issues here as
8 presenting an issue of actual conflict which is disqualifying
9 under the language. But, you know, with respect to Your
10 Honor the representations of the debtors in connection with
11 the Cred Capital situation and the convertible note placement
12 while there's a potential, they are also troubling meaning
13 that, you know, because of the nature of the work that was
14 performed, they very well could become ripe at some point and
15 this court has a discretion to do something about them at
16 this juncture with respect to that.

17 So, you know, Your Honor, we raised a point about
18 Rule 2014 disclosures here. If the court compares its
19 understanding of Paul Hastings' services before and after,
20 reading the supplemental declaration that was submitted, that
21 filing makes the U.S. Trustee's point, meaning that all of
22 the information contained in the supplement was available to
23 the firm at the time it followed its initial employment
24 application.

25 The entire point of that rule is that parties in

1 interest shouldn't have to ask for the information that was
2 provided in the supplement.

3 So, Your Honor, we believe that there are certain
4 potential conflicts in play here where the Uphold issue is
5 significant and it's different. And for that reason, Your
6 Honor, we ask the court to deny the application.

7 THE COURT: Mr. Grogan, any rebuttal?

8 MR. GROGAN: Your Honor, do you want to hear from
9 me? I think committee counsel might have wanted to be heard
10 on this as well.

11 THE COURT: Oh okay. Let me hear from committee's
12 counsel.

13 If you're speaking, you're on mute.

14 Committee's counsel has decided not to be heard on
15 this issue.

16 MR. WALSH: Your Honor, it's (indiscernible)
17 again. I need to upgrade a little bit.

18 You know, we've gone through, we've looked at the
19 objections raised by the U.S. Trustee and the responses by
20 debtors' counsel. And just for what it's worth, Your Honor,
21 we don't see it as an impediment and it definitely hasn't
22 been an impediment, to date, with respect to the activities
23 we've been engaged in with the debtors.

24 So, we support their retention, Your Honor.

25 THE COURT: Thank you, Mr. Walsh.

1 MR. GROGAN: Your Honor, there cannot be an
2 imagined actual conflict. The Uphold Decrypt litigation does
3 not involve a debtor. There is no way that we have a
4 conflict related to litigation among third parties where we
5 literally represent none of those parties. That is what is
6 actually happening in Decrypt. The debtor was dropped from
7 the case. I am representing non-parties at this point of
8 that litigation.

9 With respect to the other issues with Uphold. You
10 know, it's no different than Wells Fargo. Wells Fargo in the
11 Art Van Furniture case was the secured lender with an all-
12 asset lien. It was a big deal in the case. Frankly, I don't
13 think Uphold comes anywhere close to, you know, having the
14 same status as the secured lender with an all-asset lien.

15 Sure, they may have referred some customers to us.
16 Sure, we had a small position of cryptocurrency that they
17 were holding on the petition date. But that doesn't rise to
18 the level of an actual conflict where all the matters that we
19 have with Uphold currently as a firm have nothing to do with
20 (indiscernible). And there is zero evidence that we have not
21 diligently and aggressively represented this company
22 throughout the Chapter 11 cases.

23 So, I think we're disinterested. I think the
24 record shows it. We've worked around the clock to represent
25 the debtors' interest in every situation. And, you know, as

1 a firm we sometimes defer to conflicts counsel to avoid the,
2 you know, the difficulty of dealing with your own clients in
3 bankruptcy but that's why Mr. Cousins is handling it.

4 THE COURT: All right. Well, obviously,
5 allegations of conflicts of interest of counsel is a serious
6 issue and I want to take a little bit of time to go back and
7 look at the affidavits and the other evidence that the
8 parties have submitted, so I'm going to take it under
9 advisement.

10 Off the top of my head, at this point, I don't see
11 an actual conflict of interest, but I just want to look at it
12 again myself to make sure that I'm comfortable with that
13 before I give you a ruling, but I will do that as quickly as
14 possible.

15 MR. GROGAN: Thank you, Your Honor.

16 Next on our agenda is the debtors' application for
17 entry of an order authorizing the retention of Teneo Capital.

18 Your Honor, we received an objection to this
19 application from the U.S. Trustee's office. It really falls
20 into two categories. One, the U.S. Trustee objected to the
21 tail fee.

22 Essentially, what Teneo -- the terms of Teneo's
23 application would entitle it to a transaction fee if a
24 transaction is consummated within twelve months after
25 termination. We view this as a standard within market

1 provision. It protects Teneo from doing a lot of work. And
2 if for some reason this case does not work out as we hope it
3 will and a subsequent trustee takes advantage of the work
4 that they've done to line up buyers, they're entitled to some
5 benefit from that, and that's what the tail fee provides.

6 The U.S. Trustee also objected to some of the
7 disclosures. Let me explain the situation there.

8 One of the --

9 THE COURT: If you are -- yeah, someone is not
10 muted. Operator, if you can identify that person, would you
11 disconnect them, please?

12 MR. GROGAN: So one of the professionals that's
13 working on the Teneo team is a fellow named Matt Shapiro.

14 THE COURT: Hold on one second. We still have it.

15 Operator, can you identify who that is with an
16 open line who's speaking?

17 Operator, can you hear me?

18 OPERATOR: Yes, I can.

19 THE COURT: Can you identify who that is and
20 disconnect them from the call?

21 OPERATOR: I'm trying.

22 THE COURT: Okay. Thank you.

23 MR. GROGAN: Thank you, Your Honor.

24 Would you like me to continue or wait?

25 THE COURT: Let's wait a second and see if we are

1 clear of this.

2 OPERATOR: I've identified the line.

3 THE COURT: Okay. Thank you, operator. I

4 appreciate it.

5 All right, go ahead, Mr. Grogan.

6 MR. GROGAN: Thank you.

7 So the issue is that Teneo has contracted with a
8 cryptocurrency specialist to work with the team on this
9 particular engagement. His name is Matthew Shapiro. He
10 works at a firm called Multicoin. And he has a tremendous
11 amount of cryptocurrency experience which we think will be
12 invaluable in terms of identifying perspective buyers and
13 also addressing the issues that will likely come up during
14 the sale process.

15 There were connections that Teneo identified that
16 have to do with Mr. Shapiro's employment with Multicoin.
17 Those connections have been shared with the U.S. Trustee's
18 office; however, the U.S. Trustee has requested that we file
19 a supplemental declaration making these disclosures public.

20 That would be a violation of Mr. Shapiro's
21 employment agreement with Multicoin; however, he has
22 disclosed that these are -- these investors in Multicoin do
23 hold amounts that are less than one million dollars and I
24 think the U.S. Trustee has all of the information to evaluate
25 whether or not there's any concerns there. It just comes

1 down to whether or not it would become public.

2 And on that front, you know, we just -- Mr.

3 Shapiro cannot be put into a position where he would have to
4 publish confidential information that would likely result in
5 the termination of his employment with Multicoin.

6 So, for that reason, we would request that the
7 court give us some grace on that, just given the facts that
8 we're having to deal with. And it's not a lack of disclosure
9 to the trustee. It's just does the public need to know who
10 investors in Multicoin happen to be. We don't think that
11 that's necessary.

12 He has made every disclosure that he can,
13 including the fact that he has this relationship with
14 Multicoin. It's just, you know, how deep do we have to dive.

15 We also have received some comments, informal
16 comments, to the application from the committee. And to
17 resolve that, the form of order has been revised.

18 Teneo has agreed to modify the compensation and if
19 the sale proceeds exceed \$10 million dollars, Teneo would
20 agree to credit one half of the monthly fees that they earned
21 presale, preclosing against the ten plus -- against the
22 transaction fee that they would earn on a transaction for
23 more than \$10 million dollars. If the sale proceeds are less
24 than ten million, there would be no crediting. And I believe
25 that resolves the committee's issues.

1 With that, Your Honor, we would request that you
2 approve the retention of Teneo.

3 THE COURT: Okay. Let me hear from Mr. McMahon.

4 MR. MCMAHON: Your Honor, very briefly.

5 First, the revised proposed form of order is
6 acceptable to us.

7 Second with respect to the disclosure issue, we've
8 offered to Teneo and the debtors, you know, to the option of
9 filing, proposing to file the disclosure under seal, pursuant
10 to Rule 2014, just so that what it is that is of import to
11 the disclosure requirements of the Code are filed of record.

12 So that's our key concern there just meaning that
13 it's part of the court's record. So, if they don't want to
14 disclose it publicly, seeking to file it under seal is an
15 option. And that's our argument.

16 Thank you.

17 THE COURT: Mr. Grogan, any issue with filing it
18 under seal?

19 MR. GROGAN: Yes. Unfortunately, Mr. Shapiro was
20 unable to do that because an order sealing a document can be
21 eventually unsealed. And he could not take that risk.

22 THE COURT: Well, I'm not sure there's a legal
23 basis for me to say that because he is afraid it might get
24 unsealed sometime in the future, he's not obligated to
25 provide the information that's required by the Code.

1 MR. GROGAN: Well, I don't -- I mean I know that
2 the U.S. Trustee wants this disclosure, I don't think there's
3 anything in the Code that requires it. What we're talking
4 about are investors in Multicoin. And Mr. Shapiro has
5 disclosed that he has an employment relationship with
6 Multicoin. It's just, you know, do we need to go that extra
7 step of disclosing who owns Multicoin.

8 THE COURT: Mr. McMahon, why do we have to
9 disclose who the owners of an entity are that Mr. Shapiro
10 works for?

11 MR. MCMAHON: Because, Your Honor, the link to
12 these bankruptcy cases is that that's the connection that's
13 germane. Like, in other words, that's the critical
14 information is to why we even need to have to the disclosure
15 in the first place.

16 So, again, you know, Rule 2014 says what it says,
17 full disclosure of connections. And the more opaque these
18 documents get, owners, you know -- a couple of owners in my
19 employer are customers and claimants of Cred. Well, what
20 does that really tell me? And if you can come out and say
21 that publicly, but it tells me nothing. It keeps me
22 guessing.

23 So, you know, all I want is an accurate statement
24 of what the connection is as part of the court's record and,
25 again, sealing is not an issue.

1 THE COURT: Well, I think if Mr. Shapiro wants to
2 be involved, we need to have a disclosure but I'm not sure
3 that it's necessary to disclose who the principals are of an
4 entity that you work for.

5 If we were to take that to its full extent, you'd
6 have to do that in every case for every entity. That if
7 someone says they work for IBM, do they have to disclose
8 every shareholder of IBM because they might be a creditor in
9 the case? I don't think that's the case.

10 And I think as long as Mr. McMahon has received
11 the information that he needs to satisfy himself that there
12 is no potential connection. And we have disclosed that he
13 works for Multicoin, I think that's sufficient at this point.
14 So, I'm not going to order him to disclose who the owners of
15 Multicoin are.

16 So with that, I'll overrule the objection then and
17 enter the order.

18 MR. GROGAN: Thank you, Your Honor.

19 Okay. The last retention is the motion under
20 Section 363 for engaging a chief restructuring officer, and
21 additional employees from Sonoran Capital. This is Matt
22 Foster's firm.

23 I think that the -- Mr. McMahon can correct me if
24 I'm wrong, but I think that the only issue there was the
25 possibility of duplication of effort between Sonoran Capital

1 and MAACO. I think Mr. Foster has filed a supplemental
2 disclosure which provides additional information regarding
3 the allocation of responsibilities, as well as the disclosure
4 of any additional employees that will be working for him
5 through Sonoran Capital.

6 I'll leave it to Mr. McMahon to weigh in, but that
7 may be sufficient.

8 THE COURT: Mr. McMahon.

9 MR. MCMAHON: Your Honor, with respect to where
10 we're at with this, clearly, I think that -- we made a point
11 with respect to J. Alix Protocol which we kind of closely
12 guard because it provides a set of rules regarding these
13 types of retentions under 363 as to what, you know, should
14 happen.

15 Immediately before the hearing, I did, this one,
16 just because there's been such a volume of issues in
17 connection with these cases, I forwarded certain, I guess,
18 cleanup comments to the proposed order that I think would be
19 agreeable to Sonoran and would finally address our concerns
20 in full.

21 So, I don't know if debtors' counsel is willing to
22 do this, but if we could possibly adjourn that briefly with
23 the intention of submitting a revised order under
24 certification of counsel as early as Monday, that would be
25 our preferred way of handling this.

1 THE COURT: Mr. Grogan?

2 MR. GROGAN: You know, if we can get it resolved
3 that would be great. I'm going to rely on Mr. Bongartz a
4 little bit. Did you get -- Mr. Bongartz, do you have the
5 cleanup comments?

6 MR. BONGARTZ: I do. We need to -- I just want to
7 have a chance to talk to Matt Foster and Sonoran to make sure
8 that they are acceptable for them as well, but in principle I
9 think we can get there.

10 MR. GROGAN: Okay. Great.

11 So, we'll adjourn that one, I guess, to January
12 6th in case we can't resolve it.

13 THE COURT: Okay. That's fine.

14 MR. COUSINS: Your Honor, it's Scott Cousins
15 again. This is one heck of an agenda. I think the two
16 motions have been addressed for Trustee examiner Chapter 11
17 trustee.

18 As we mentioned at the beginning of the
19 afternoon's hearing, UpgradeYa is pushing and the debtors are
20 in agreement, their motion until January 6th. So, unless
21 someone else is picking up something that I missed, I think
22 that's it for today.

23 THE COURT: All right. Anybody else have any
24 other issues then before we adjourn?

25 (No verbal response)

1 THE COURT: All right. Well thank you all very
2 much. As I said, I will -- I'm going to take a look at the
3 Paul Hastings retention issue and I'll wait to see the
4 uploaded forms of order and, otherwise, I will guess I'll see
5 everybody on January 6th for our next hearing, unless
6 something else pops up unexpectedly.

7 I'll wish everybody happy holidays and a happy New
8 Year and I'll see you in 2021.

9 UNIDENTIFIED SPEAKER: Likewise, Your Honor. Thank
10 you.

11 (A Chorus of "Thank you, Your Honor")

12 THE COURT: All right, we're adjourned. Thank
13 you.

14 (Proceedings conclude at 4:45 p.m.)

15

16

17 CERTIFICATE

18

19 I certify that the foregoing is a correct transcript
20 from the electronic sound recording of the proceedings in the
21 above-entitled matter.

22

/s/Mary Zajaczkowski

December 21, 2020

23

Mary Zajaczkowski, CET**D-531

24

/s/Coleen Rand

December 21, 2020

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Coleen Rand, AAERT Cert. No. 341